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# Smart Growth at Century's End: The State of the States

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## I. Introduction

THE SECOND HALF OF THE TWENTIETH CENTURY ushered in a new wave of state land-use reform known as "growth management." Legislatures in states including Florida, Georgia, Hawaii, New Jersey, Oregon, Rhode Island, Vermont, and Washington, adopted statewide planning and growth management programs from the 1960s through the 1980s to deal with problems including rapid population growth, threats to environmental preservation, inadequate public infrastructure, lack of affordable housing, and other quality of life concerns. For decades, the programs developed in these states had been held out in the literature and at national and state conferences as models for other states to follow. However, most states did not follow the course of reform nor the lessons learned from these experiences in the so called "Quiet Revolution."

The 1990s have held out lessons of individualism in state and local approaches to growth management, smart growth, and modernization of state land-use statutes. The only discernable thread that weaves through the fabric of land-use control in the last decade of this century is that for the first time in eighty years, state and local governments are noticeably moving away from the constraints of traditional *Euclidean* zoning, opting for more innovative land-use planning and control techniques. The shift is gradual and is tailored to meet the needs of diverse jurisdictions.

The political strategies for accomplishing this reform, along with highlights of recent and ongoing modernization efforts across the United States are discussed in Part I. Part II offers an analysis of the political strategies for modernizing state land-use statutes based on personal interviews, visits, and critiques of programs in eight states.

### A. *The Case for Modernization*

State governments across the country continue to modernize seemingly outdated land-use enabling statutes, with the realization that enabling

legislation enacted based upon models developed in the 1920s by the U.S. Department of Commerce (the standard zoning enabling acts) fail to address modern problems. Seventy-five years ago we did not have the extensive public infrastructure which exists today. Scientific testimony regarding the impacts of land-use decision-making on clean air and clean water had not been developed, and we had not yet experienced the population growth and land development which took place over the ensuing decades, particularly in our suburban areas and rural countryside. Earlier in the century our cities were more vibrant, in fact they were the focal point of activity. People knew their neighbors and lived in a place where "neighborhood" and "community" meant something different than it does today.

Modern statutes, regulations and case law, which govern and impact land-use decision making, are more complicated, and their numbers have increased exponentially in relation to those in effect in the 1920s. Today, we operate under a scattered framework of federal, state, and local laws and regulations, which are often disconnected both in theory and in practice. Yet, the social, environmental, and economic challenges that confront us are all impacted by local land-use decision-making. Governments are increasingly challenged to consider not merely the local impact of land-use decision-making, but regional, statewide and sometimes interstate impacts as well.

#### 1. SPRAWL

Since the 1970s, there have been over 500 studies on the issue of sprawl, with a significant amount of literature published in the 1990s.<sup>1</sup> The country continues to experience rampant suburban and rural sprawl to such an extent that in 1998 eleven governors saw fit to address land-use issues in their state of the state addresses.<sup>2</sup> A number of states including New Jersey,<sup>3</sup> Pennsylvania,<sup>4</sup> Maine,<sup>5</sup> California,<sup>6</sup> and New Hampshire<sup>7</sup> conducted or commissioned studies on the costs of sprawl.

1. TRANSPORTATION RESEARCH BOARD, THE COSTS OF SPRAWL—REVISITED (1998). The study, authored by Robert Burchell et. al., contains references to approximately 500 studies on sprawl published between 1970 and 1998.

2. See Neal Pierce, *Sprawl Rises as Issue: But Will Anything Change?* COUNTY NEWS, Oct. 12, 1998, at 25.

3. ROBERT BURCHELL, IMPACT ASSESSMENT OF THE NEW JERSEY INTERIM STATE DEVELOPMENT AND REDEVELOPMENT PLAN, REPORT II: RESEARCH FINDINGS (Feb. 28, 1992).

4. See FARMLAND PRESERVATION REPORT (Oct. 1998), which reports that the Pennsylvania Environmental Council has retained Clarion Associates to conduct a cost of sprawl study.

5. MAINE STATE PLANNING OFFICE, THE COST OF SPRAWL (May 1998).

6. WILLIAM FULTON, BEYOND SPRAWL: NEW PATTERNS OF GROWTH TO FIT THE NEW CALIFORNIA (1995).

7. 1998 N.H. Laws 197 (H.B. 1238).

Sprawl has quickly become an issue upon which diverse groups are finding common ground. In September 1998, the Sierra Club released a nationwide report on sprawl<sup>8</sup> suggesting serious sprawl threats in Atlanta, and in surrounding counties, and in St. Louis, Kansas City, Washington, D.C., Denver, Minneapolis, St. Paul, and Chicago.<sup>9</sup> A recent newspaper article in *USA Today* observed that Americans are buying more pickup trucks, minivans, and sport-utility vehicles than ever before. The article also stated that we are buying bigger houses than before, citing an average floor space of 2,120 square feet in 1996 compared to 1,520 square feet in 1971.<sup>10</sup> These trends create and support our passion for sprawl. They are further evidence of our love-hate relationship with sprawl.

Several prominent national figures have recently predicted a major sea change in land-use controls to combat the problems associated with sprawl. New Jersey Governor Christine Whitman stated in her January 1998 inaugural address: "Sprawl eats up our open space. It creates traffic jams that boggle the mind and pollute the air. Ultimately, my mission is to make New Jersey more liveable."<sup>11</sup> Syndicated columnist Neal Pierce reports that Richard Moe, president of the National Trust for Historic Preservation proclaimed: "Sprawl is about to explode onto the American scene—moving up in the political agenda." David Rusk, former mayor of Albuquerque predicts that "[g]rowth management is rapidly emerging as the top regional issue of the next decade;" and Jim Sayer, executive director of the Greenbelt Alliance announced that "after a 50-year infatuation with low density development, America is giving rise to a multifaceted anti-sprawl movement."<sup>12</sup> Although anti-sprawl has become the battle cry for many smart growth initiatives, the challenge is social as well as political.<sup>13</sup> Unpopular as the word is in some quarters, some researchers point out that it is hard to avoid concluding that "sprawl" is most people's preferred lifestyle.<sup>14</sup> One recent study suggests that the biggest net beneficiaries of sprawl are the people who move into suburban and rural communities, while the net losers are those who live in urban and more dense communities.<sup>15</sup>

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8. SIERRA CLUB, *THE DARK SIDE OF THE AMERICAN DREAM: THE COSTS AND CONSEQUENCES OF SUBURBAN SPRAWL* (1998); see [www.sierraclub.org](http://www.sierraclub.org).

9. *Id.*

10. See Porter, 4 GROWTH MGMT. REP. no. 4 (1998), at 3, citing *Consumers Talk Green, Act Brown*, *USA TODAY*, April 22, 1998.

11. <<http://www.state.nj.us/inaug>>.

12. Pierce, *supra* note 2, at 25.

13. *Id.*

14. *Id.*

15. See *Who Pays for Sprawl?*, *U.S. NEWS & WORLD REP.*, April 27, 1998.

Sprawl has been described as, "the pattern that takes over when, with little coordinated planning, people and businesses desert established communities to develop the open countryside."<sup>16</sup> The National Association of Home Builders has recognized that urban sprawl is becoming a fiercely contested issue, citing a national agenda with some major environmental organizations on sprawl development.<sup>17</sup> The National Trust for Historic Preservation recently unveiled a new sprawl-watch clearinghouse on the Internet.<sup>18</sup> Although some advocacy groups may view sprawl as an environmental issue, it is clearly not the equivalent to the environmental protection and preservation movements in early decades; rather, it is more akin to a broader definition of environment, encompassing economic development and quality of life concerns.

The federal government has taken a keen interest in sprawl and smart growth, as manifested in a number of recent initiatives. For example, the U.S. Department of Housing and Urban Development has been a major funder of the American Planning Association's Growing Smart initiative; the Environmental Protection Agency has funded the International City/County Management Association's Smart Growth Network; and Vice President Gore continues to speak about Smart Growth on a frequent basis. Congress has also joined the growing list of governmental bodies interested in smart growth. At the request of members of Congress, the General Accounting Office is currently examining the influence of federal government policies and programs on local or metropolitan growth.<sup>19</sup> Recently, a bi-partisan U.S. Senate Task Force on sprawl was created for the purpose of further examining the issue.

## 2. SMART GROWTH

The latest buzz words are "smart growth." Smart growth is the phrase picked by Maryland Governor Paris Glendenning when he unveiled his recent urban infill, environmental protection and economic development initiative detailed below. Depending upon who one listens to, smart growth may be defined to encompass many different concepts. For example, the International City/County Managers Association, in recognizing that there is no "one-size-fits-all" solution, has described smart growth as a connection between development and quality of life; the leveraging of new growth to improve community; restoration of

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16. *Smart Growth Bill Bow to Reality: Fight Sprawl or Watch it get Worse*, BUFFALO NEWS, May 3, 1998, at H-2.

17. Sharon O'Malley, *Smart Growth*, and Philip Langdon, *Sprawl*, BUILDER, July 1998.

18. <http://www.sprawlwatch.org>

19. See generally SMART GROWTH NETWORK, GETTING SMART! (Nov. 1998).



center cities and older suburbs; and as a method of preserving open space and other environmental amenities.<sup>20</sup> Smart growth seeks to recognize, "the crucial role that development plays in maintaining and improving communities" by acknowledging, "the fiscal, environmental and other concerns that are dominating current discussions and asks the fundamental question: not whether, but how to grow."<sup>21</sup> Even the media has taken notice of smart growth, with the number of articles on the subject increasing fivefold from twenty-three in 1996 to 149 in 1997.<sup>22</sup> More recently, hardly a week has gone by without an article on sprawl in *The New York Times*, *USA Today*, and the *Nation's Cities Weekly*.

*B. Current Efforts at Modernization: Emerging Case Studies*

Across the country there is a wake-up call to local, regional, and state governments to begin the process of modernizing land-use planning and land-use controls. These reform efforts may follow principles espoused by courts or may lead governments down a new path. Numerous approaches are being utilized from statutory reform for overall coordination and smart growth to comprehensive recodification, to a piecemeal approach over a given period of time. As one official put it,

This is not about no growth, or even slow growth. Most people want the jobs, tax revenues, and amenities that growth and development can provide. But they want them without degrading the environment, raising local taxes, increasing traffic congestion, or breaking local government budgets—and they believe that development is very much a part of the solution.<sup>23</sup>

Because smart growth principles, including enhancing the sense of community, protecting neighborhood investments, certainty in the development process, decreasing traffic congestion, and efficient use of public funds, employ techniques such as use of public/private partnerships, innovative use of public funds and entities, and incentives for the private sector to accomplish these goals, developers, environmentalists, affordable housing providers, and alternative transportation advocates all seem to agree on a wide range of smart growth issues.<sup>24</sup>

When the Clinton Administration was first sent to the White House in 1992, Vice President Al Gore was assigned the task of "reinventing

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20. INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION WITH GEOFF ANDERSON, *WHY SMART GROWTH: A PRIMER*, (1998).

21. Geoffrey Anderson & Harriet Tregoning, *Smart Growth in Our Future?*, ULI ON THE FUTURE: SMART GROWTH: ECONOMY, COMMUNITY, ENVIRONMENT (1998), at 10.

22. SMART GROWTH NETWORK, *SMART GROWTH NETWORK PROGRESS REPORT: MOVING SMART GROWTH FROM THEORY TO POLICY & PRACTICE* (Dec. 1998), at 12.

23. Anderson & Tregoning, *supra* note 21, at 4.

24. *Id.* at 10.

government." Now, the Vice President seems to be taking on the issue of reinventing land-use planning and zoning. At the December 1998 Congress of Cities meeting, the Vice President maintained that unplanned growth forces American families to spend more money on transportation and more time in traffic.<sup>25</sup> In fact, the Vice President urged delegates to "cast aside the old animosities and divisions between cities and suburbs and rural communities and decide that we are going to work together for more liveable, walkable, playable cities and suburbs."<sup>26</sup> In January 1999, the White House released its agenda for Liveable Communities, an agenda that the Vice President will be carrying for the Administration.

This article highlights the emerging case studies of modernization efforts. Fortunately, the 1990s have witnessed a renewed interest in land-use reform. The increasing level of activity may be attributable to several factors including the work of the American Planning Association's Growing Smart initiative, the efforts of the National Growth Management Leadership Project, and more than a dozen "1000 Friends" organizations, emerging public-private partnerships in support of land-use reform, and the new ICMA/EPA Smart Growth Network. The discussion below is focused on states where there have been significant legislative and executive agency activities in the second half of the 1990s. It should be noted however, that other states, including, but not limited to, California, Connecticut, and North Carolina have had active proposals under consideration in the early part of the 1990s.<sup>27</sup>

#### 1. ARIZONA

Since 1960, Arizona has tripled in population and it continues to grow three times faster than the nation as a whole. It was no surprise that on May 29, 1998, the Arizona legislature enacted a new law establishing the Growing Smarter Commission,<sup>28</sup> charged with studying growth related issues and reporting findings and recommendations to the governor and to the legislative leaders by September 1, 1999.<sup>29</sup> In addition,

25. Elaine Harris, *Gore Shares 21st Century Vision for Cities, Calls for Partnerships*, NATION'S CITIES WKLY., December 14, 1998.

26. *Id.* at 5.

27. For a discussion of the proposals and activities in each of these states, see Patricia E. Salkin, *Statewide Comprehensive Planning: The Next Wave*, in STATE & REGIONAL COMPREHENSIVE PLANNING: IMPLEMENTING NEW METHODS FOR GROWTH MANAGEMENT (1993).

28. H.R. CON. RES. 2361 (Az. 1998).

29. In addition to establishing the Commission, the Act adds new elements to turn land-use plans into growth management plans; requires greater public participation in the creation of general plans; elevates the importance of general plans in local and county jurisdictions; requires that zoning decisions conform to the general plans; and provides a mechanism for the acquisition and preservation of open spaces, including funding therefore.

the legislature passed a House Concurrent Resolution, "The Growing Smarter Act," which consists of comprehensive municipal, county, and state land-use planning reforms, and provides a program for continuing study and consideration of pertinent issues relating to land-use policies.<sup>30</sup> The Resolution, which was put to a referendum vote in early November, is a response to a citizens' growth management initiative which appeared on the ballot on Election Day 1998.<sup>31</sup> The Resolution, which was defeated, was more comprehensive, requiring municipalities to adopt new comprehensive plans every ten years, and providing \$20 million per year in state matching funds for land conservation.<sup>32</sup>

In 1998, the Arizona legislature also enacted a statute providing authorization to municipalities to establish procedures for transfer of development rights,<sup>33</sup> an innovative technique in the smart growth toolbox.

On June 12, 1998, Governor Hull named a fifteen-member Growing Smarter Commission<sup>34</sup> to study issues relating to growth. The Commission has established eight subcommittees<sup>35</sup> involving more than 100 citizens from across the state. The Commission has stated that through its work, it hopes to answer the fundamental question: "What 10 to 20 actions can we take as a State to improve the quality of Arizona's growth as we enter the 21st Century?"<sup>36</sup> A draft report is expected in June 1999, and with plans for a subsequent extensive citizen participation program, a final report is anticipated for September 1999.<sup>37</sup>

## 2. COLORADO

On September 9, 1994 Governor Romer released a nine-step plan for Smart Growth in Colorado.<sup>38</sup> One year later, the governor convened the

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30. H.R. CON. RES. 2027, 2d Leg. Sess. (Ariz. 1998).

31. December 1, 1998 (Arizona).

32. H.R. CON. RES. 2027, 2d Leg. Sess. (Ariz. 1998).

33. S. 1238, Ch 145 (Ariz. 1997).

34. "Governor Celebrates the Passage of Growing Smarter," Agenda for Growing Smarter Press Conference, June 12, 1998; see <http://www.governor.state.az.us/news/releases/6-12-98>.

35. Subcommittees have been organized around the following eight topics: changes in the State Land Department's mandate and exchange authority; reforms of municipal and county land-use statutes; creation of programs to purchase development rights and conservation easements; reforms to regional planning processes; concepts to improve the management of urban and rural growth patterns; programs to promote urban infill, revitalization and redevelopment; programs to promote rural economies; and programs to increase federal funding of the Land & Water Conservation Fund. See Growing Smarter Brochure, Draft #3 2/22/99 (on file with author).

36. Growing Smarter Brochure, Draft #3 2/22/99.

37. *Id.* As early evidence of their intention to involve the public, the Commission has established a website donated by the Arizona Planning Association. It can be found at <http://www.azplanning.org>.

38. SMART GROWTH AND DEVELOPMENT ACTION CENTER, SMART GROWTH AND DEVELOPMENT: A WORK IN PROGRESS (July 1996). The governor's plan outlined spe-



"Colorado Leadership Summit on Smart Growth and Development" which was attended by over 1,000 people representing state and local officials, environmentalists, developers, planners, business people, and agricultural interests.<sup>39</sup> A key principle gleaned from the summit is the belief that most decisions regarding growth and development should be made at the local and regional levels.<sup>40</sup>

An Interregional Council was formed with representatives from eleven regions to address agriculture, economic vitality/affordable housing, land use and governance, natural resources and environment, sustainable communities, and transportation/air quality.<sup>41</sup> Draft Council recommendations were submitted at the second statewide symposium on growth and development.

Governor Romer's commitment to smart growth is demonstrated through his annual Smart Growth Award Program, initiated in 1995 to recognize individuals, community groups, local governments and public-private partnerships that take innovative measures to balance growth with community needs.<sup>42</sup> Romer's latest initiative will award \$1 million in matching grants to qualified political subdivisions, housing authorities, and regional governments that provide innovative solutions for regional growth.<sup>43</sup> Although The Responsible Growth Act was defeated by the legislature in 1998, efforts are underway to reintroduce the measure even through a ballot initiative.<sup>44</sup>

### 3. DELAWARE

In December of 1994, the Cabinet Committee on State Planning Issues sponsored a conference called "Shaping Delaware's Future."<sup>45</sup> The program reached out to the public and private sectors in an effort to develop

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cific elements of a locally driven, bottom up approach for creating a vision for Colorado and shaping the state's future.

39. *Id.*

40. *Id.* See also State of Colorado's website <http://governor.state.co.us/smartgrowth/>, which defines the Smart Growth and Development Initiative as, "a forum in which public discourse has progressed beyond the simplistic notions of 'pro-growth' and 'no-growth,' by developing partnerships among state and local governments, key stakeholder groups, and citizens. This grass roots process of developing local, regional and statewide visions, and the strategies to achieve them, continues throughout Colorado."

41. *Id.*

42. SMART GROWTH & DEVELOPMENT, INTERREGIONAL COUNCIL RECOMMENDATIONS FOR THE STATE OF COLORADO, FINAL DRAFT DOC. (Nov. 9, 1995).

43. Andrew Simons, *State Offers Grants to Aid Local Growth*, DENVER POST, Mar. 8, 1998.

44. See *Smart Growth Network, Spotlight on Smart Growth Activities, Getting Smart!* Vol. 1, No. 1 at 6 (1998).

45. SHAPING DELAWARE'S FUTURE (Newsletter of the Cabinet Comm. on State Planning Issues, Del.), Feb. 17, 1995.

a statewide vision for the next twenty-five years.<sup>46</sup> The conference identified several major consequences of failing to coordinate growth and development, including: loss of community character and identity, continued decline of older cities, growing separation between the city and the suburb, adverse effects on older suburban areas, adverse effects on natural resources, and loss of productive farmland.<sup>47</sup> One key aspect of the program was public involvement.<sup>48</sup>

In 1995, a report entitled "Shaping Delaware's Future" was released.<sup>49</sup> To better plan for an anticipated increase in population (of over 180,000 people by the year 2020 with an estimate that this could lead to the development of as much as 125,000 acres of open space), the report recommended ten development goals.<sup>50</sup> Following the release of the report, the governor established, via executive order, a State Planning Citizen's Advisory Panel and an Advisory Panel on Intergovernmental Planning and Coordination.<sup>51</sup> The panel has five working subcommittees: redevelopment and infill, public outreach, land development and regulation process, governance, and infrastructure and finance.<sup>52</sup> That same month, the Shaping Delaware's Future Act was introduced, and it was enacted into law three months later.<sup>53</sup> The Act requires, among other things, that the counties submit comprehensive land-use plans to the Office of State Planning Coordination.<sup>54</sup>

Delaware is an example of a state which continues to work hard at overhauling its land-use system. According to reports, the State Plan-

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46. *Id.*

47. *Id.*

48. Interactive open houses were scheduled to keep the dialogue going. *Id.*

49. SHAPING DELAWARE'S FUTURE (Newsletter of the Cabinet Comm. on State Planning Issues, Del.), Apr. 1995.

50. (1) Directing state investment and future development to existing communities, urban concentrations, and designated growth areas; (2) protecting important farmland from ill-advised development; (3) protecting critical natural resource areas from ill-advised development; (4) developing methods for assessing the fiscal impact and cost-benefit analysis of development for use by both state and local governments when considering land-use policies and infrastructure investment; (5) streamlining regulatory processes and providing flexible incentives and disincentives to encourage growth in desired areas; (6) encouraging redevelopment and improving livability of existing communities and urban areas, and guiding new employment into under-used commercial and industrial sites; (7) providing high quality employment opportunities for citizens with various skill levels, and attracting and retaining a diverse economic base; (8) protecting the state's water supplies, open spaces, farmlands, and communities by encouraging revitalization of existing water and wastewater systems and the construction of new systems; (9) promoting mobility for people and goods through a balanced, multi-modal transportation system; and (10) providing access to educational opportunities and health care for all Delawareans. *Id.* at 8-15.

51. Exec. Order No. 29

52. 1995 ANNUAL ASSESSMENT REPORT TO THE CABINET COMMITTEE ON STATE PLANNING ISSUES, DELAWARE OFFICE OF STATE PLANNING COORDINATION (July 1996).

53. 70 Del. Laws 270 (1995).

54. *Id.*

ning Office was in essence dismantled in the early 1980s, and thanks to the leadership of Governor Carper and the support of the legislature, a revitalized Office of State Planning Coordination is taking shape.<sup>55</sup> The cabinet level Office is charged with, among other things, working with the Cabinet Committee on State Planning Issues and collecting and coordinating comprehensive plan updates which are required under the state's Quality of Life Act.<sup>56</sup>

At the urging of the Governor's Cabinet on State Planning Issues and a special ad hoc Task Force of the General Assembly on Land Development, the Delaware Public Policy Institute held a land-use summit, "Choices for Delaware: The Future of Land Use and Infrastructure" designed to produce recommendations and possible legislation.<sup>57</sup> Over the course of a few months a Land Use Study Committee comprised of ninety-nine people (representing stakeholders including state and county governments, legislators, business groups, environmentalists, civic associations, labor representatives, economic developers, and agricultural interests), analyzed the recommendations presented during the two-day summit, and they presented their findings in May at a second summit.<sup>58</sup> The study committee divided sixty-four separate alternatives into ten major issue categories and, based on their deliberations, recommended the consideration and implementation of fifteen programs.<sup>59</sup> The report also provided draft legislation for each of the recommended programs where appropriate.<sup>60</sup>

On July 18, 1996 Governor Carper signed H.B. 506, the Land Use and Planning Act (LUPA) into law.<sup>61</sup> LUPA mandates that any land-use issues of greater than local concern, such as local ordinances, proposed annexations, and conditional use applications, be circulated

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55. Anthony DePrima, *PLANNING*, February 1997, at 34.

56. *Id.*

57. Press Release from Delaware Public Policy Institute (Feb. 5, 1997) (on file with author).

58. *CHOICES FOR DELAWARE, THE FUTURE OF LAND USE AND INFRASTRUCTURE* (May 27, 1997) (prepared by Simeon, Larsen and Marsh).

59. The issue categories were: Adequate Public Facilities, Infrastructure Capacity and Demand, Character and Quality of Planning, Patterns of Development, Plan Implementation, Agriculture, Equity, Affordable Housing, Certainty and Property Rights. *Id.* at 2.

60. The recommended programs consist of: Delaware Conservation, Development and Redevelopment Plan; Statewide Planning Database; Required Municipal Comprehensive Plans; Expanded Requirements for County and Municipal Comprehensive Plans; School Districts; Transfer of Development Rights; Statutory Sunsetting/Vesting; Comprehensive Plan Implementation; Delaware Quality Development; Transportation Funding; State PAR Funding; Rural Land Residential Density; Transportation Level of Service Standards; Comprehensive Wastewater Treatment Standards; and Additional Revenue Sources.

61. 70 Del. Laws 522 (1996).

through the Office of State Planning Coordination (OSPC), which then forwards these proposals to eleven other state agencies for review and comment.<sup>62</sup> In response to the lag time involved in paper circulation and the desire of State planners for better communication, the OSPC is currently developing a system wherein LUPA's and their attachments can be forwarded to each of the state agencies through e-mail.<sup>63</sup> Thus far, online agencies have responded very favorably to the new system and OSPC is looking forward to bringing all county planning departments into the process.<sup>64</sup> OSPC now offers a complete listing of LUPA comments regarding projects proposed at the local government level on its website.<sup>65</sup>

The 1997 Delaware Land Use Planning Summit resulted in recommendations for new land-use legislation.<sup>66</sup> Three of the eleven bills introduced as a result of the summit passed. These three initiatives expand the membership on the Advisory Panel on Intergovernmental Planning and Coordination to represent interests of municipalities and counties<sup>67</sup> and create a statewide Geographic Data Committee to coordinate data<sup>68</sup> and strengthen planning at the town and city level.<sup>69</sup> It is anticipated that four bills, perhaps with modifications, will be reintroduced in 1999, including: a bill to encourage intergovernmental coordination;<sup>70</sup> legislation requiring the state to prepare and adopt an official state plan for land use, growth management, and infrastructure

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62. Correspondence on file with author, "Shaping Delaware's Future" chronology, Donna Sharp, Planner, Office of State Planning.

63. Correspondence on file with author, "Electronic LUPA transmission speeds agency response time, eliminates most faces," Donna Sharp, Planner, Office of State Planning.

64. *Id.*

65. <http://www.state.de.us/planning>.

66. See Delaware Office of State Planning Coordination, Legislative Update, July 8, 1998.

67. H.R. 394, 139th Leg. (Del. 1998).

68. H.R. 395, 139th Leg. (Del. 1998).

69. H.R. 396, 139th Leg. (Del. 1998).

The Act was written to reinforce the importance of municipalities to the state as the historical focus of much of the state's early development and as a potential focus for new development. It also recognizes that unplanned and uncoordinated growth of municipalities can be detrimental to the long-term goals of the state and the counties. The Act redefines the purpose and content of municipal comprehensive plans to municipal zoning provisions, and gives the plans the force of law once adopted. It also adds reporting, review and revision requirements.

See Delaware Office of State Planning and Coordination, Legislative Update, July 8, 1998.

70. The 1998 version of the bill, H.B. 397, "would have enabled the counties to develop Intergovernmental Coordination Zones in which land use decisions could be coordinated between municipalities and the counties." See DELAWARE CHAPTER, AMERICAN PLANNING ASSOCIATION & STATE OFFICE OF PLANNING COORDINATION, DELAWARE PLANNING NEWS BULL., Summer 1998.



investment;<sup>71</sup> a bill making it easier to accomplish transfer of development rights to encourage infill, redevelopment, and the preservation of agricultural and open space;<sup>72</sup> and a requirement that counties examine whether their comprehensive plans have intended consequences (e.g., whether they limit redevelopment, provide barriers to affordable housing, or threaten the long-term viability of agriculture).<sup>73</sup>

The 1998 release of the Annual Assessment Report to the Cabinet Committee on State Planning Issues presents an analysis of statewide trends, issues, and opportunities relating to land use and development.<sup>74</sup> Among the significant findings were loss of agricultural lands,<sup>75</sup> an increase in residential land use,<sup>76</sup> and an even faster rate of commercial and industrial development.<sup>77</sup> The assessment warns: "That much new development is built in a pattern of sprawl is as important as the amount of new development."<sup>78</sup> Reasons cited for the increase in sprawl include the use of the automobile and truck with the construction of new roads to support them, and the age of computers which has "spawned foot-loose home and business locations not dependent on any central location."<sup>79</sup> The report concludes that although sprawl continues at low densities, it "is difficult to efficiently serve with transportation and other infrastructure" and it "continues to cause the loss of prime farmland and natural areas."<sup>80</sup>

Also in 1998, the Advisory Panel on Intergovernmental Planning was expanded to include representation of municipalities and counties,<sup>81</sup> the Delaware Geographic Data Committee was created to coordinate data management,<sup>82</sup> and planning at the town and city level was strengthened

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71. The 1998 version of the bill was H.B. 212. According to a published report by the State Office of Planning Coordination, Governor Carper is considering issuing an executive order in 1999 calling for a state plan. *See* Delaware Office of State Planning Coordination, Legislative Update, July 8, 1998.

72. H.R. 213 (1998).

73. H.R. 215 (1998).

74. THE OFFICE OF STATE PLANNING COORDINATION, 1997 ANNUAL ASSESSMENT REPORT TO THE CABINET COMMITTEE ON STATE PLANNING ISSUES (July 1998).

75. *Id.* at 9.

76. *Id.* at 8.

77. *Id.* at 7.

78. *Id.* at 11.

79. Thus, there are two fundamental . . . land use trends in . . . Delaware . . . . The first is that, on the one hand, land use activities are becoming more spread out, densities are declining and more land is being used for each activity. The second contrasting trend is that in travel time, time-distance, the travel time between land uses is shrinking functionally bringing everything closer.

*See supra* note 74, at 11.

80. *Id.* at 34.

81. H.R. 394, 139th Leg. (Del. 1997).

82. *See supra* note 68. The version of the bill that passed was a substitute, rewritten to emphasize coordination, rather than consolidation or centralization of data and GIS



as municipalities were given more involvement with the statewide planning process.<sup>83</sup>

On the agenda for 1999, the Office of State Planning Coordination hopes to see passage of an Intergovernmental Coordination Zone bill to enable Delaware's three counties to develop Intergovernmental Coordination Zones in which land-use decisions could be coordinated between municipalities and counties.<sup>84</sup> Governor Carper has also received recent recognition for his role in promoting coordinated planning.<sup>85</sup>

#### 4. HAWAII

A joint legislative Committee consisting of five members from each house was established in 1997 to examine the state's land-use planning laws and recommend improvements. The four major problems identified in the joint resolution are: (1) too much effort spent on regulation and not enough on effective planning; (2) confusion about the state's agricultural district, especially about where housing should be located; (3) lack of coordination between state and county planning; and (4) too small a role for the public in long-range planning.<sup>86</sup> In January 1998 a bill was introduced to overhaul the state's planning laws.<sup>87</sup> The legislation, drafted by the Hawaii Chapter of the American Planning Association (APA) relies heavily on the research and "best practices" developed through the APA's Growing Smart Project.<sup>88</sup> This proposal is one of many offered by the Economic Revitalization Task Force. Although no one initiative has yet gained enough support, there is speculation that reform may be on the horizon in 1999.

#### 5. IOWA

During the 1997 legislative session the Legislative Council enacted House Concurrent Resolution 21 that called for the creation of the Commission on Urban Planning, Growth Management of Cities, and

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activities. See letter on file with author from Donna Sharp, Office of State Planning Coordination, Feb. 8, 1999.

83. See *supra* note 69. This bill redefines the purpose and content of municipal comprehensive plans, it sets minimum standards, links the plan to municipal zoning provisions, and gives the plan force of law once adopted. Reporting, review, and revision requirements are also part of the package.

84. Letter on file with author from Donna Sharp, Office of State Planning Coordination, Feb. 8, 1999. The letter reiterates, "State efforts to control growth and limit sprawl will continue to make municipalities the focus of development and redevelopment in Delaware."

85. The governor is the recipient of the American Planning Association's 1999 National Award for Distinguished Leadership for an Elected Official. In January 1999 he was also awarded the national achievement award from the American Farmland Trust for his role in farmland protection.

86. *Id.*

87. H.R. 3322 (Haw. 1998); S. 3150 (Haw. 1998).

88. James Lawlor, *From the States*, PLANNING (Mar. 1998), at 40.

Protection of Farmland.<sup>89</sup> The Commission was composed of twenty-one voting members with expertise in planning, development, design, zoning, annexation, agriculture, historic preservation, transportation, and conservation.<sup>90</sup> The task of the Commission was to collect information on current land-use patterns and policies in Iowa.<sup>91</sup> The Commission issued its final report in January 1999.<sup>92</sup>

Seven subcommissions were appointed to consider specific issues: finance, annexation, private property rights, land use planning and policy/urban revitalization, public park and recreation/natural and historic areas, farmland inventories/farmland preservation, and infrastructure costs and subsidies/tax implications of development.<sup>93</sup> The subcommissions submitted reports to the commission in May 1998,<sup>94</sup> and the commission held ten public hearings.<sup>95</sup> The final report contains a number of proposals including: development of a statewide land-use inventory; assistance for local governments to maintain their inventories; continuation of the commission; development of a council composed of representatives of state agencies to establish, maintain, and revise a state strategic development plan; requiring cities and counties to prepare plans and in some cases joint plans; providing that developments within counties that do not comply with the plans would not be eligible for government incentives; and increasing the rights of persons over their property.<sup>96</sup>

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89. COMMISSION ON URBAN PLANNING, GROWTH MANAGEMENT OF CITIES, AND PROTECTION OF FARMLAND, IOWA, PROGRESS REPORT, January 1998.

90. *Id.* at 1. The Commission consists of 17 citizen members and 4 legislators.

91. The purpose of the study is to: review county land-use inventories; survey the status of Iowa farmland and natural areas; determine the extent to which areas have been converted to residential, commercial, or industrial use; report on the agricultural quality of farmland converted to residential, commercial, or industrial use; survey problems facing the state's cities; evaluate the effectiveness of current state, regional, and local planning and zoning laws and assess their impact on the farmland, natural areas, and cities of the state; review model legislation and studies on farmland protection and urban planning; collect information on states that have undertaken reform efforts and have effective programs; propose innovative and cooperative planning and land-use approaches that will protect farmland; accommodate and guide growth and development, ensure the planning and construction of adequate supporting services and infrastructure including utilities, storm water management systems, and transportation; provide opportunities for or eliminate barriers to affordable housing; protect the environment; and minimize exposure to natural hazards. *Id.* at 2.

92. STATE OF IOWA, FINAL REPORT OF THE COMMISSION ON URBAN PLANNING, GROWTH MANAGEMENT OF CITIES, AND PROTECTION OF FARMLAND, available on the General Assembly's webpage at <http://www.legis.state.ia.us>.

93. *Id.* at 6.

94. *Id.*

95. *Id.*

96. STATE OF IOWA, FINAL REPORT OF THE COMMISSION ON URBAN PLANNING, GROWTH MANAGEMENT OF CITIES, AND PROTECTION OF FARMLAND (Jan. 1999).

The impetus behind the creation of the commission comes from Representative Ed Fallon in response to local concerns about maintaining agricultural lands and the existing quality of life.<sup>97</sup>

#### 6. MARYLAND

In 1992, Maryland made some fairly significant amendments to state planning laws with the enactment of the Economic Growth, Resource Protection and Planning Act (Growth Act).<sup>98</sup> Among other things, the Act requires local commissions to make recommendations for streamlining of development regulations in areas designated for growth, and it required local planning commissions to enact by 1997 a sensitive area element containing goals and standards to protect sensitive areas from the adverse impacts of development.<sup>99</sup> In addition, plans are to reflect seven visions identified in the Act, and all plans are to be reviewed every six years.<sup>100</sup>

The Growth Act called for the creation of The Economic Growth, Resource Protection, and Planning Commission ("Commission").<sup>101</sup> The Commission's function is to provide the governor and the General Assembly with an annual report which details state and local compliance with the Growth Act and explores new solutions for improved compliance.<sup>102</sup> In determining the success of the Growth Act through 1996, the commission relied on five principles which have been incorporated into the Act and in light of which any new growth management legislation should be promulgated.<sup>103</sup>

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97. Telephone Interview with Stewart Huntington, Iowa State University (Jan. 22, 1998).

98. The Economic Growth, Resource Protection, and Planning Act Amendments of 1992, MD. ANN. CODE, ZONING & PLANNING, art. 66B.

99. *Id.*

100. *Id.* at § 306(b):

[T]he commission shall implement the following visions through the plan described in § 305 of this article: (1) Development is concentrated in suitable areas; (2) Sensitive areas are protected; (3) In rural areas, growth is directed to existing population centers and resource areas are protected; (4) Stewardship of the Chesapeake Bay and the land is a universal ethic; (5) Conservation of resources, including a reduction in resource consumption, is practiced; (6) To assure through (5) of this subsection, economic growth is encouraged and regulatory mechanisms are streamlined; and (7) Funding mechanisms are addressed to achieve these visions.

101. James T. Noonan & Gail Moran, *Implementation of Maryland's Economic Growth, Resource Protection, and Planning Act*, FAU/FIU JOINT CENTER FOR ENVIRONMENTAL AND URBAN PROBLEMS, at 14.

102. *Id.*

103. (1) Local governments should retain primary responsibility for land-use decisions; (2) each region of the state is different, thereby eliminating a one-size-fits-all approach; (3) the state should consider the growth implications of all of its actions, including infrastructure funding; (4) the state should coordinate land-use efforts which affect economic development, interjurisdictional conflicts, regional arrangements, and environmental issues. ECONOMIC GROWTH, RESOURCE PROTECTION, AND PLANNING COMMISSION 1996 ANNUAL REPORT, vol.1, at 3-4 (1996).

According to the report, strengths of the Growth Act in promoting these principles are reflected in the preservation of local land-use authority, the flexibility in unique local conditions, the focus on state and local activities on directed growth in a consistent manner, and its measure of progress and potential for future action.<sup>104</sup> The committee provided the following seven specific conclusions and recommendations for improving the Act's effectiveness: (1) preservation of the four guiding principles,<sup>105</sup> (2) a consensus between local and state definitions of the seven visions; (3) coordination of local plans on a regional level; (4) formal program for growth indicators at a local and state level; (5) formal mechanisms to guide state agency actions in support of local plans for growth and resource protection; and to promote a broader vision of regional and Statewide actions for economic growth, development, and protection; (6) development of a sound and growing economic base to protect natural resources; and (7) target of outlays to improve infrastructure, public safety, schools, and transportation investments.<sup>106</sup>

Faced with the prospect of unplanned sprawl development due to an expected population increase of 1 million people by the year 2020, combined with continuing urban (and suburban) flight, the Maryland General Assembly enacted Governor Glendenning's Neighborhood Conservation and Smart Growth (Smart Growth) initiatives in 1997.<sup>107</sup> The purpose of Smart Growth is to guide the actions of government agencies, private developers, and local officials and to provide the State with programmatic and fiscal tools to help local governments comply with the state's growth policies.<sup>108</sup>

The central component of Smart Growth is the Areas Priority Funding initiative. Beginning October 1, 1998, the state will concentrate its project funding in areas designated as "priority funding areas" to encourage economic development and new growth in existing developments and communities as well as growth in predesignated areas of the state.<sup>109</sup> Other program initiatives include the Rural Legacy Program,<sup>110</sup> designed to preserve agricultural, forest, and natural resource lands; the

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104. *Id.* at 5-6.

105. *Id.* at 8.

106. *Id.* at 7-8.

107. MD. ANN. CODE, STATE FIN. & PROC. § 5-7B-01 (1997).

108. *Id.*

109. Maryland municipalities, existing communities, industrial areas, and planned growth areas designated by counties will receive priority funding under Smart Growth. *Id.*

110. MD. ANN. CODE, NAT. RES. § 5-9A-01 (1997).



Brownfields Program,<sup>111</sup> designed to encourage redevelopment of abandoned or underutilized industrial sites; the Job Creation Tax Credit Act,<sup>112</sup> which provides income tax credits to business owners who create at least twenty-five jobs in a Priority Funding Area; and the Live Near Your Work Program,<sup>113</sup> which provides home buyers who purchase in older neighborhoods near their jobs with a minimum of \$3,000 toward the purchase of their home.<sup>114</sup>

Governor Glendenning issued an executive order in 1998 detailing the policies and procedures state agencies are to follow in meeting the visions in the 1992 Planning Act which also guide the Smart Growth measure.<sup>115</sup> In addition, the order establishes a Smart Growth and Neighborhood Conservation Sub-Cabinet to provide a forum for inter-agency coordination.<sup>116</sup>

Reports from Maryland have, on the whole, been positive.<sup>117</sup> The Planning Act and subsequent Smart Growth Act have generated a lot of visibility for growth management in Maryland.<sup>118</sup> Local governments, concerned about untamed growth, have been revising their plans.<sup>119</sup> Counties have been involved in zoning previously unrestricted areas, downsizing, and designating growth areas in the competition for state funds.<sup>120</sup> In addition to providing assistance to the Economic Growth, Resource Protection, and Planning Commission, the Office of Planning has been instrumental in providing regional and local govern-

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111. Redevelopment Bond Act, MD. ANN. CODE art. 41, § 14-805 (1997).

112. MD. ANN. CODE, art. 83A, § 5-1101 (1997).

113. The Maryland Department of Housing and Community Development implements this demonstration program.

114. *Id.*

115. Exec. Order 01.01.1998.04. *See also* 4 GROWTH MGMT. REP. no. 4 (1998). The order requires state agencies to:

- give priority to central business districts, downtown cores, empowerment zones and revitalization areas when funding infrastructure projects or locating new facilities;
- review, evaluate and coordinate programs, services and activities in Priority Funding Areas to enhance and support community revitalization;
- work with local jurisdictions to ensure that programs and activities in rural areas will sustain the character of villages in the area;
- encourage locating workshops, conferences and other meetings in priority funding areas and support available businesses in these areas when planning such activities; and
- encourage federal agencies to adopt flexible regulations and standards which are more responsive to state and local policies and can be used to support the Smart Growth policies.

116. *Id.*

117. Telephone conversation with Gail Moran, Maryland Office of Planning, October 23, 1997.

118. *Id.* *See also* <http://222.op.state.md.us/smartgrowth/>.

119. *Id.*

120. *Id.*



ments with technical assistance and advice as regions and localities attempt to bring their local plans into compliance with management mandates.<sup>121</sup> A Smart Growth website has been put online,<sup>122</sup> and slick public information brochures have been developed to support the program.<sup>123</sup> In his FY 2000 budget, the Governor proved his commitment to smart growth by eliminating funding for five highway projects not consistent with the Smart Growth Act.<sup>124</sup>

#### 7. MASSACHUSETTS

Although Massachusetts was viewed in the early 1990s as a state on the verge of "Growing Smart,"<sup>125</sup> the momentum seemed to wane. In 1996, Governor Cellucci issued an executive order, Planning for Growth, establishing a framework within which state agencies could cooperatively plan for growth and protect natural resources.<sup>126</sup> Although the level of enthusiasm from the early 1990s was not sustained, a March 1999 symposium planned by the Massachusetts Environmental League and the Lincoln Institute of Land Policy continued the leadership and education on this issue.

#### 8. MICHIGAN

Pursuant to a report citing the absence of land-use planning as the biggest threat to Michigan's natural resources,<sup>127</sup> the Michigan Natural Resources Commission (NRC) created the Task Force on Integrated Land Use in the spring of 1994.<sup>128</sup> Among other things, the Task Force was charged with reviewing relevant regulations and laws and making recommendations for change.<sup>129</sup> Recommendations for changes in planning and zoning laws included calls for comprehensive planning, a referendum on zoning, the codification of planning and zoning laws, and new growth management tools.<sup>130</sup> Revisions in current land-use

121. The Office of Planning has aggressively been pursuing the use of computer technology to improve planning assistance. For instance, "drawing" software shows localities the results or impacts of their local planning decisions while GIS is being used to guide regional decisions such as transportation and watershed protection. MARYLAND OFFICE OF PLANNING ANNUAL REPORT, 1995/1996.

122. See <http://www.op.state.md.us/smartgrowth>.

123. For example, "Smart Growth and Neighborhood Conservation: A Legacy for Our Children" is a 16-page color guide for the public written, designed and produced by the Maryland Office of Planning.

124. See BOWERS, FARMLAND PRESERVATION REPORT at 4 (Feb. 1999). For a general discussion of Maryland's approach to smart growth and transportation, see David L. Winstead, *Smart Growth, Smart Transportation: A New Program to Manage Growth in Maryland*, 30 URB. LAW. 537 (1998).

125. See Salkin, *supra* note 27.

126. See Mass. Exec. Order 385 (1996).

127. Governor John Engler, *Michigan's Environment and Relative Risk* (June 1992).

128. *Toward Integrated Land Use Planning*, 14 PLANNING AND ZONING NEWS No. 5, Mar. 1996, at 5-6.

129. *Id.* at 6.

130. *Id.* at 8.

laws and policies were suggested for the Michigan Drain Code, the Subdivision Control Act/Site Condos, farm and forest roads, correction of certain exclusions from the planning process, permit fees, and the training and certification of planning and zoning officials.<sup>131</sup> The task force also found statutory reform was needed in the areas of intergovernmental communication, urban revitalization, rural preservation, and data dissemination.<sup>132</sup> The Michigan Society of Planning Officials Trend Future Final Report, 1995, challenges the state's leaders to "work together to find consensus on a land-use pattern that leads to a prosperity sustainable for all—a consensus that preserves individual choice while protecting the communal interests of present and future generations."<sup>133</sup>

Michigan currently has seven planning and zoning enabling acts.<sup>134</sup> The Michigan Chapter of the American Planning Association (MAPA) has suggested unification of all seven statutes into one unified planning enabling statute with clear legal authority.<sup>135</sup> Other recommendations include a growth management system which would implement consistency between local decisions and state goals and objectives, concurrence between project approval and existing infrastructure, the promotion of compact urban growth patterns, provisions for affordable housing, and natural resource protection.<sup>136</sup> Among other things, this type of growth management system requires strong political leadership, a comprehensive state land-use system, and an advocacy organization, such as a 1000 Friends of Michigan group.<sup>137</sup>

During the 1997 legislative session, two land-use bills were introduced. One would have provided for township planning and the creation of township planning commissions.<sup>138</sup> The second initiative, enacted into law, provides for planning at the city, village, and municipal

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131. *Id.* at 8–9.

132. *Id.* at 11–12.

133. *Toward Integrated Land Use Planning*, 14 PLANNING AND ZONING NEWS No. 5, Mar. 1996, at 12.

134. The Municipal Planning Act; the Township Planning Act; the County Planning Act; the Regional Planning Act; the Township Rural Zoning Act; the County Rural Zoning Enabling Act; and the City-Village Zoning Act, *House Republican Policy Committee Task Force Report on Land Use*, at 3 April 1994.

135. *Id.*

136. John M. DeGrove, *State Growth Management Systems That Integrate and Coordinate Land Use Planning: An Overview, Land Use Issues and Alternatives*, 14 PLANNING AND ZONING NEWS No. 3, January 1996, at 9.

137. *Id.* at 10.

138. H.R. 5149 (Mich. 1997). This bill was introduced into the legislature on September 30, 1997. No further action was taken.

levels, the creation of planning commissions, and the regulation and subdivision of land.<sup>139</sup>

#### 9. MINNESOTA

The Community Based Planning Act of 1997 represents a major step in the direction of more comprehensive land-use planning.<sup>140</sup> A new regional growth plan was also adopted in 1997, creating an urban growth boundary, called the Urban Growth Reservoir.

#### 10. NEVADA

The Southern Nevada Strategic Planning Authority was created in 1997 to examine issues surrounding growth in and around the Las Vegas region.<sup>141</sup> The authority, consisting of twenty-one members (fourteen private sector appointees and seven elected officials) is currently preparing a report for the legislature<sup>142</sup> that is expected to focus on economic development, education, environment, housing, zoning, parks, public safety, transportation, water, sewage, and sanitation.<sup>143</sup> A regional planning effort, this initiative was mandated by the legislature in response to rapid growth and concerns about economic development and affordable housing.

#### 11. NEW HAMPSHIRE

In June 1998, the New Hampshire legislature initiated a study on sprawl with the appointment of a six-member panel established to study ways of managing land use to reduce sprawl and protect rural character.<sup>144</sup> After holding weekly meetings with various stakeholders, the panel reported its findings to the legislature and the governor in October 1998.<sup>145</sup> The report recommends eight actions, including a recommendation that the Office of State Planning assume a "leadership role in guiding and coordinating funding policies; to educate local planning

139. H.R. 4034 (Mich. 1997), *amends* 1983 Mich. Pub. Acts 285, MICH. COMP. LAWS §§ 125.31 & 125.33.

140. Among the planning and development goals outlined are:

The development of coordinated sustainable economic strategies;

The protection of natural resources;

The creation of liveable neighborhoods;

The development of a more coordinated and efficient housing, transportation and public education systems.

141. S. 383 (Nev. 1997).

142. Ed Vogel, *Legislative Wraps Long, Costly Run*, LAS VEGAS REV.-J., July 8, 1997.

143. Susan Greene, *Panel Ready to Take on Growth-Related Issues*, LAS VEGAS REV.-J., Sept. 9, 1997.

144. 1998 N.H. Laws 197 (H.B. 1238). In its statement of purpose, the law asserts that sprawl has disrupted the traditional character of New Hampshire Communities, contributing to a loss of "a sense of place."

145. Land Use Management and Farmland Preservation Study, Final Report (Oct. 1998).

and zoning authorities with the nature, causes, and remedies for sprawl they can act upon; and to continue to develop and promulgate model ordinances and planning devices for localities.”

## 12. NEW MEXICO

In 1996, the state legislature enacted Senate Joint Memorial 34 which requested the Local Government Division to conduct a comprehensive study of the costs and benefits of growth and the evaluation of growth management alternatives.<sup>146</sup> The report, *Growth in New Mexico: Impacts and Options*, was issued in December 1996<sup>147</sup> and offers a comprehensive analysis of issues and options for statewide growth management. Similar to Delaware's population projections, the New Mexico report estimated that by 2015 there will be 650,000 more New Mexicans than in 1995.<sup>148</sup>

The report, which stops short of recommended policies, offers a menu of thirty-five policy options which may be pursued at the state and/or local level.<sup>149</sup> The options are characterized into four major headings: (1) land-use strategies; (2) intergovernmental agreements; (3) public facilities techniques; and (4) economic development.<sup>150</sup> Suggested actions include, among other things: streamlining of state and local permitting; reforming the state zoning code; requiring consistency between adopted plans and local decisions; creating a growth management consensus project; establishing a statewide task force on growth; requiring coordinated planning; establishing a regional review and permitting process; developing growth management joint powers agreements; focusing scarce public dollars into public investment areas; and incorporating economic development into any growth management package.<sup>151</sup> The report discusses key recommendations from reports from other states, including the May 1996 Arizona Town Hall.<sup>152</sup>

The report has been receiving favorable response from the local frontline planners who have used it as a resource guide in evaluating their own land-use regulations and policies.<sup>153</sup> However, for planning

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146. Senate Joint Memorial 34 (1996).

147. Ken Hughes, *Growth in New Mexico: Impacts and Options*, N.M. LOC. GOV'T DIV. (1996).

148. The report points out that this amounts to the combined current populations of Albuquerque, Las Cruces, Santa Fe, and Roswell. The report also claims that New Mexico will be the second most favorite place in the country after California. *Id.*

149. *Id.* at 99–112.

150. *Id.*

151. *Id.*

152. The Arizona report addressed: developing a statewide vision that incorporates goals for Arizona's future in managing growth and protecting the environment; and the adoption of the Four C's—coordination, collaboration, cooperation and common sense. *Id.* at 55–59.

153. Correspondence on file with author, Dan Hughes, dated Nov. 13, 1997.



and growth management to become a reality in New Mexico, local citizens and the state's legislators, mayors, and other government officials need to take up the banner.<sup>154</sup> Planning reform legislation is a ripe topic in New Mexico, with 1000 Friends of New Mexico, the New Mexico Municipal League, and the newly created localism effort at the Local Government Division all advocating for growth management.<sup>155</sup> A Growth Management Appropriation Bill, S.B. 193, which would have funded a study for the purpose of evaluating and reporting on growth impacts and issues in certain communities experiencing high growth, was introduced during the 1997 legislative session, but it failed to win support.<sup>156</sup> Although a bill to establish a commission to undertake strategic planning at the state level passed the legislature in 1997, it was vetoed by Governor Johnson.<sup>157</sup> A proposal in 1998 was also vetoed.<sup>158</sup>

The impetus and support behind both the Senate Memorial and the Appropriation bill comes from 1000 Friends of New Mexico.<sup>159</sup> According to reports, 1000 Friends is beginning to make some headway.<sup>160</sup> Private anti-planning sentiments are beginning to diminish as people realize that no planning equals no protection.<sup>161</sup> Several stakeholder interests at a forum recently sponsored by the organization were able to put aside their differences and focus on ways to implement some statewide planning legislation.<sup>162</sup> Current projects include fostering cooperation in the development community and the implementation of a Growth Circuit Rider Program, designed to educate rural constituencies on the importance of controlled growth.<sup>163</sup> At a recent 1000 Friends Panel, ten action options were identified for inclusion in the state's growth management strategies.<sup>164</sup>

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154. *Id.*

155. *Id.*

156. S. 793 (N.M. 1997).

157. H.R. 340 (N.M. 1997).

158. H.R. 922 (N.M. 1998) (was supported by New Mexico first).

159. 1000 Friends of New Mexico is a bi-partisan organization whose goals reflect a basic desire to address land and water-use issues in New Mexico, as well as to protect the traditions and values endemic to the state, through the use of public forums and prepared reports. It is patterned after similar groups in California, New York, New Jersey, Hawaii, Oregon, Massachusetts, Pennsylvania, Rhode Island, and Vermont. SANTA FE NEW MEXICAN, Sept. 21, 1997.

160. Telephone conversation with Lora Lucero of 1000 Friends of New Mexico, Oct. 30, 1997.

161. *Id.*

162. *Id.*

163. *Id.*

164. The state should strive to: incorporate economic development into growth management packages; use public dollars to encourage community redevelopment; streamline state and local permitting; document fiscal impacts of growth; document existing



Since the Local Government Division published its report, it has completed a planning survey of local governments.<sup>165</sup> The survey revealed that while 77 percent of all responding municipalities and counties had some type of comprehensive plan, only four in ten communities had any regional land-use agreement and only 39 percent had a planning department.<sup>166</sup> Survey respondents identified a need for technical assistance to create plans, professional assistance from land-use attorneys, and regional planning assistance.<sup>167</sup> Some respondents suggested the resurrection of a statewide planning office to help localities with the lack of funds and to provide guidelines to local communities in implementing their own comprehensive plans and growth management strategies.<sup>168</sup> In the meantime the division has developed strategies that localities can use to manage their own growth.<sup>169</sup>

In October 1998, the New Mexico Chapter of the American Planning Association adopted four new policy guides, including a policy for growth management and planning enabling legislation.<sup>170</sup> The Chapter set forth a fifteen point general policy position supporting a comprehensive revision of the state planning, subdivision, and land-use enabling statutes.<sup>171</sup> This policy was strengthened with the release of a memorial by the New Mexico Municipal League, which requests that

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contradictory and conflicting state policies, programs, and processes; view environmental quality and quality of life as economic assets; promote diverse small businesses; put a premium on human resources; use collaboration as a decision-making tool; and recognize that growth and development are not synonyms. *1000 Friends Panel, Talking Points*, Nov. 15, 1997 (on file with author).

165. Local Government Division, *Planning Survey of New Mexico Local Governments*, Sept. 5, 1997.

166. *Id.* at 6–7.

167. *Id.* at 7.

168. *Id.* at 8.

169. (1) Pay for infrastructure as you grow, not after; (2) focus public investments on designated growth areas; (3) zone for smaller lot sizes; (4) buy lands to preserve open space; (5) fill in land already served by infrastructure; (6) manage growth on a multi-jurisdictional basis; (7) preserve rural farmland; (8) designate a community growth boundary; (9) think skinny streets and small parking lots; and (10) promote neighborhood development with mixed use zoning.

170. New Mexico Chapter of the American Planning Association, "Policy Guide on Growth Management and Planning Enabling Legislation," Adopted by the Membership on October 1, 1998. The three other policy guides adopted address water planning, affordable housing, and infrastructure financing.

171. *Id.* The 15 points are:

1. Provide state goals for areas of statewide concern or interest.
2. Ensure adequate funding and support to facilitate the planning process.
3. Eliminate inconsistencies and conflicts in the current enabling laws.
4. Require an integrated and mandatory planning framework for all levels of government (state, regional, counties and municipalities) while recognizing the varying capacities of each.
5. Provide clear direction on the substantive requirements of local comprehensive

a legislative committee study revisions of the land-use planning enabling legislation.<sup>172</sup>

### 13. NEW YORK

In June of 1996, the State Commission on the Capital Region released its report, "Growing Together Within the Capital Region." Created and funded by the state legislature in 1994, the commission set out to assess ways to improve the delivery of local government services through regional approaches. When the Commission was getting started, they held facilitated public hearings in each of the participating counties for the purpose of identifying five discrete substantive areas where they would focus research and study for eighteen months. From almost two dozen potential identified areas of study, land-use planning ended up on the "top five list" in every county where public hearings were held.

The commission created a land-use advisory committee to make recommendations.<sup>173</sup> The committee had representation from the public, private, and nonprofit sectors, and after many heated meetings, delivered a consensus report with nearly unanimous committee support for every recommendation. The commission adopted most of the recommendations. In several instances, however, commission members al-

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plans (with required and optional elements, level of specificity for each element and internal consistency between different elements).

6. Provide clear procedural requirements for adoption and revision of comprehensive plans, including early, continuing and meaningful public participation in the process.
  7. Require consistency between a community's plan, regulations and development decisions.
  8. Require a streamlined development review process that provides a measure of certainty and predictability to all stakeholders.
  9. Provide effective processes for planning and cooperation at the regional level.
  10. Require that new development be phased in with the provision of adequate public facilities, services and infrastructure, while addressing infrastructure rehabilitation and deficiencies in already developed areas with adequate funding.
  11. Provide clear statutory authority for communities to use innovative tools to accomplish the goals and policies in their comprehensive plans (such as unified development ordinances, adequate public facility ordinances, urban service areas, urban growth boundaries, transfer of development rights, development impact fees, environmental review and mitigation monitoring processes).
  12. Ensure that local and regional plans are consistent with state planning goals, encouraging flexibility and local autonomy to best address the challenges at the local level.
  13. Provide both incentives and disincentives to ensure that communities undertake meaningful planning for the 21st century.
  14. Provide a level of review (either at the state or regional level) to ensure that local comprehensive plans are consistent with statutory requirements.
  15. Reinvigorate a state planning office to coordinate state-wide planning activities at all levels and to provide necessary technical assistance and review.
172. New Mexico Chapter of the American Planning Association, Newsletter (Dec. 1998).
173. The author served as consultant to the Land Use Committee.

tered the approaches and then integrated them with recommendations from the economic development and transportation areas.<sup>174</sup>

The commission was unsuccessful in its efforts to secure state funding to continue its work. A June 1997 invitational forum on regional planning was held, targeting all chief elected municipal officials, key business leaders, key regionalism leaders, real estate specialists, and others, for a day-long working session to determine whether there was any interest in moving forward with regional planning.<sup>175</sup> There was interest in cooperation and collaboration, but it was clear it was going to be slow and incremental. Participants wanted education, information, and dialogue. Local officials need to develop a greater trust of one another, and people need to talk more about comfort levels as to exactly what a regional plan and/or process is and what it is not. While there was no strong consensus to charge forward with the development of a regional land-use vision or planning document in the near future, there was great interest in developing next steps, and identifying an appropriate entity, or entities, to continue the dialogue once the commission sunsets.

A second ongoing initiative in New York is the work of the Legislative Commission on Rural Resources and their comprehensive effort to recodify and codify New York's land-use laws. The New York approach offers a textbook case study of how to successfully modernize land-use statutes incrementally. From 1990 through 1998, the commission, assisted by a Land Use Advisory Committee, has been responsible for developing and helping to enact over thirty new land-use laws. These laws, which cover everything from codifying case law which was never included in statute, to developing consistent laws for cities, towns and villages, to innovative zoning techniques such as incentive zoning, have made the tough job of planning and zoning by board members somewhat easier by providing guidance and clarification. Although New York is not a state which has had any official government involvement in terms of vocal support for statewide and regional planning, the commission has been able to get laws enacted which coordinate local planning with the Agricultural Districts Program, and which provide specific authorization for intermunicipal cooperation in land-use planning (as well as for county participation in these planning

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174. Part II of the report, titled *Managing and Investing in the Region's Assets: For a Stronger Economy and a Better Quality of Life*, suggests strategies for integrating land use, economic development, and transportation planning.

175. The Forum was hosted by the Government Law Center of Albany Law School.

agreements). In 1997, new statutory authority for county planning boards and regional planning councils was enacted.

In March 1998, two bills related to smart growth were introduced. One bill directed the governor to prepare a smart growth compact between the various constituencies involved with shaping patterns of development in the state.<sup>176</sup> A second bill called for the creation of a seventeen member Planning and Land Use Task Force to study local, regional, and statewide planning issues and to issue recommendations to thwart sprawl.<sup>177</sup> Although no action was taken on these bills during the 1998 Legislative Session, statewide municipal associations, the home builders, and environmental interests have all held major programs centered around smart growth for the state and Senator Rath and Assemblyman Hoyt have held regional forums on the proposals.

In 1999, New York has already experienced unprecedented interest in smart growth and sprawl. Legislation entitled, "The Smart Growth Economic Competitiveness Act of 1999" was introduced in January 1999 by Senator Rath and Assemblyman Hoyt.<sup>178</sup> The legislation calls upon the governor to develop a smart growth economic competitiveness strategy.<sup>179</sup> The bill further permits the secretary of state to award regional compact competitiveness grants to intermunicipal entities for the purpose of identifying priority funding areas within their geographic area or for undertaking a cooperative planning project.<sup>180</sup> A seventeen member Smart Growth Economic Competitiveness Task Force would also be formed to advise the governor and the legislature.<sup>181</sup> A press conference officially announced the introduction of the bill on February 22, 1999. Public hearings followed on March 1, 1999, in Albany and

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176. A. 10038 (N.Y. 1998) (A. Hoyt).

177. S. 7256 (N.Y. 1998) (Sen. Rath).

178. S. 1367/A. 1969 (N.Y. 1999-2000). *See also* Susan Schulman, *Curbing Sprawl is the Goal of Rath-Hoyt Proposal*, BUFF. NEWS, Jan. 4, 1999, at C1. According to the yet unfiled draft of the sponsor's memo, it is evident that the legislation is modeled on the Maryland Act. It calls upon the governor to develop a smart growth economic strategy and it creates a seventeen member economic competitiveness task force.

179. S. 1367/A. 1969 (N.Y. 1999-2000). The bill suggests a number of items that may be included in such a strategy including: guidelines for local and regional identification of priority funding areas for eligible state funding; an arrangement for a collaborative compact process for local governments; identification of projects that have an impact on settlement patterns; recommendations for organizing regional compacts to implement the smart growth strategy; and identification of any necessary state organizational changes.

180. *Id.*

181. Among their functions and duties are: evaluating the effectiveness of current state, regional and local infrastructure policies; surveying stakeholders; reviewing model legislation, studies, and the cost of sprawl; identifying data collection and analysis; proposing a GIS strategy; and proposing innovative and cooperative economic development planning and land-use approaches. *See* S. 1367/A. 1969, § 160-ccc.



April 9, 1999, in Buffalo. In addition to the legislative activity, special educational forums have been held every month during the legislative session on the topic of smart growth by the public, private, nonprofit, and academic communities.<sup>182</sup>

#### 14. OHIO

In the summer of 1998, on the heels of the work of the Ohio Farmland Preservation Force,<sup>183</sup> regional focus groups were assembled by the state universities in Cleveland, Cincinnati, Columbus, Akron, Dayton, Kent, Toledo, and Youngstown. These focus groups only confirmed the anger and concern over the impacts of sprawl on their communities.<sup>184</sup> One focus group, EcoCity Cleveland, invited Stuart Meck of the American Planning Association to address the issue of smart growth in the fall of 1998. A working paper was published and distributed by the organization,<sup>185</sup> leading one commentator to believe that a smart growth plan is under development in the state.<sup>186</sup>

#### 15. PENNSYLVANIA

Pennsylvania is another state which demonstrated serious promise of reform in the early 1990s.<sup>187</sup> Although numerous legislative commissions were constituted to study the issue and to conduct hearings, resulting in recommendations and in legislation, no bills have been enacted to date. In 1997, Governor Ridge formed the 21st Century Environmental Commission, a panel of forty cabinet members, legislators, business leaders, environmentalists, and planners.<sup>188</sup> The panel, after identifying sprawl development as its biggest environment-related concern, issued 240 recommendations in September 1998, including, among other things, a comprehensive revision of the planning and zon-

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182. A February 22, 1999, program on smart growth presented by Rochester Mayor William Johnson, Jr., is the annual Crawford Lecture on Municipal Law at Albany Law School. That same evening, the Government Law Center of Albany Law School, along with the Lincoln Institute of Land Policy, hosted an invitational dinner for members of the legislature, the governor's cabinet, and key stakeholders. On March 3 and 4, 1999, a major statewide conference on smart growth was held at the Empire State Plaza. The conference was chaired by the Secretary of State of New York and featured members of the legislature and executive branch. It was co-sponsored by dozens of interested organizations. On April 13, 1999, the Government Law Center sponsored a legislative breakfast program for members of the legislature concerning smart growth for New York.

183. The task force was created by Governor Voinovich via executive order in 1996. It issued its report in 1997.

184. Neal Pierce, *Fighting Sprawl: A New Civil Rights Movement?*, COUNTY NEWS, Nov. 23, 1998, at 5.

185. EcoCity Cleveland, *Ohio Smart Growth Agenda* (1998).

186. Pierce, *supra* note 184 at 5.

187. Salkin, *supra* note 27.

188. Pa. Exec. Order No. 1997-4 (1997).



ing enabling statutes.<sup>189</sup> The Commission also recommended urban growth boundaries as one tool to discourage suburban sprawl. On January 7, 1999, Governor Ridge issued an executive order<sup>190</sup> setting forth the policy of the commonwealth to guide all commonwealth agencies when making decisions that impact the use of land.<sup>191</sup> To accomplish his goals, the governor designated the Center for Local Government Services as the lead state agency responsible for land-use assistance and monitoring.<sup>192</sup> He also directed that the Governor's Green Government Council work to ensure that state agencies act consistently with the goals of the executive order in the administration of their operations (including acquisitions and other practices), and that the Department of Environmental Protection establish a statewide geospatial data clearinghouse.<sup>193</sup>

#### 16. TENNESSEE

In 1998, Tennessee enacted a new law incorporating many smart growth themes, including urban growth boundaries and planned growth areas.<sup>194</sup> The act was created to establish a comprehensive growth strat-

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189. See *Smart Growth Network Progress Report: Moving Smart Growth from Theory to Policy & Practice*, ICMA/EPA/ULI (1998).

190. Exec. Order No. 1999-1 (1999) (Governor's Land Use Announcement 1-7-99, press release and Executive Order).

191. The following eight policies are enumerated:

1. Soundly planned growth is in the best long term interests of the Commonwealth and should be encouraged at all levels of government.
2. Farmland and open space are valued Commonwealth natural resources and reasonable measures for their preservation should be promoted.
3. Development should be encouraged and supported in areas that have been previously developed or in locally designated growth areas.
4. Because land use decisions made at the local level have an impact that expands beyond municipal boundaries, regional cooperation among local governments should be encouraged.
5. The constitutional private property rights of Pennsylvanians must be preserved.
6. The Commonwealth shall work to improve the understanding of the impact of land use decisions on the environmental, economic and social health of communities.
7. Sustaining the economic and social vitality of Pennsylvania's communities must be a priority of state government.
8. Infrastructure maintenance and improvement plans should be consistent with sound land use practices.

See *id.*

192. Specifically, the executive order charges the Center with developing an inventory of sound land-use practices and making it readily available; providing technical assistance and education to localities in implementing the objectives of the executive order; encouraging intermunicipal cooperation in planning and zoning; working with other state agencies to develop strategies to advance the agenda; working to help incorporate the statewide greenway plan into local and regional planning strategies; creating an advisory committee; and reporting to the governor, including the submission of recommendations in further support of the goals.

193. Exec. Order No. 1999-1 (1999).

194. Pub. Ch. 1101 (Tenn. 1998): S. 3278/H.R. 3295.

egy for the state that, among other things, more closely matches the timing of development and the provision of public services, and that minimizes urban sprawl.<sup>195</sup> Each county is required to create a coordinating committee to recommend a growth plan by January 1, 2000, which shall be revised and/or ratified no later than July 1, 2001.<sup>196</sup> In August 1998, a comprehensive Guide on Growth Policy for Community Leaders was published and disseminated as the "one source" document that all implementing agencies have agreed to use.<sup>197</sup>

#### 17. UTAH

Utah Tomorrow is described as a broad-based, ongoing, strategic planning effort designed to focus on and measure progress toward specific goals for Utah's future.<sup>198</sup> The Utah Tomorrow Strategic Planning Committee, originally created in 1990 by the legislature, was reconstituted in 1993 when the governor expressed his interest in making this a joint legislative/executive branch effort.<sup>199</sup> The Utah Tomorrow Strategic Plan is organized around a vision statement intended to take a more proactive approach to planning for the future.<sup>200</sup> Task force groups,

195. *Id.* at § 3.

196. *Id.* at § 5.

197. University of Tennessee Institute for Public Service and The Tennessee Advisory Commission on Intergovernmental Relations, *Growth Policy, Annexation, and Incorporation under Public Act 1101* (Aug. 1998).

198. *Utah Tomorrow 1996 Annual Report*.

199. *Id.*

200. We, the people of Utah, stand at the edge of a new frontier. In a world of rapid economic, social, environmental, and technological change, we confront bold challenges and rich opportunities. Building upon our diverse cultures, our pioneering spirit, and our belief in the inherent worth of every person, we seek to: **NURTURE** a tolerant, just, and compassionate society that honors integrity, values strong families, welcomes diversity, and promotes positive moral values. **EDUCATE** our citizens by providing an environment that supports life-long learning and occupational skills and that enables Utahns of all ages to reach their potential as productive and responsible individuals. **BUILD** a statewide economy and infrastructure that supports a broad spectrum of opportunity for all citizens while advancing the standard of living and maintaining a high quality of life. **ENHANCE** our local and global environment through prudent development, conservation, and preservation of our natural resources while protecting public health, and preserve our sustainable food and fiber resources. **PROMOTE** personal well-being by encouraging healthy lifestyles and disease prevention, and by supporting access to quality health care at an affordable cost for all Utahns. **UNDERSTAND** our diverse human heritage, nurture and protect Utah's cultural resources, and create opportunities for cultural education and expression. **ENCOURAGE** self-sufficiency while helping those with special needs to lead productive, fulfilling lives. **PROTECT** our society by supporting a justice system that allows Utahns to enjoy a quality lifestyle consistent with the rights and liberties guaranteed under the United States and Utah Constitutions. **ASSURE** open, just and accountable government. **STRENGTHEN** our free enterprise system while providing a reasonable regulatory environment that protects our citizens. **PREPARE** ourselves, our state, and our children for the challenges of tomorrow, today.

*Id.*

comprised of representatives of executive branch agencies from each of ten key areas, developed goals, objectives, and performance measures for each of the key areas using the vision statement as a guide.<sup>201</sup> The vision statement, as well as the goals and objectives, has been officially adopted by both the governor and the legislature.

In their 1996 Annual Report, Utah Tomorrow offers some of the lessons learned,<sup>202</sup> including that: (1) all players need to be involved in the process from its inception, top leadership needs to constantly reinforce support for the process, and support of the governor and the legislative leadership is critical; (2) continuing public involvement throughout the process is important and should not be viewed as an "insider's plan;" and (3) public relations is important because there is a need to focus on press and media awareness.<sup>203</sup>

In 1996, H.B. 377 appropriated \$250,000 for the Local Government Comprehensive Planning Project to continue through fiscal year 1997.<sup>204</sup> The project, which was established in 1991, is a cooperative effort between the state and the Utah Association of Counties to provide rural counties throughout the state with the resources to prepare general plans.<sup>205</sup>

According to a newspaper account of the 1997 legislative session, while a few bills were introduced to protect open land and promote urban planning, they were buried as soon as they surfaced.<sup>206</sup> The major opposition came from rural representatives who see themselves as the guardians of private property rights.<sup>207</sup> Politically, it appears as though the major barrier rests with House Speaker Mel Brown who, in addition to being a vocal proponent of property rights, has also blocked efforts to require regional growth plans and local coordination agreements.<sup>208</sup> Not only did the Legislative Air Quality, Land Use and Transportation Committee fail to see their proposals enacted through S.B. 91, but a second bill authorizing the committee to continue for another year also died.<sup>209</sup> In addition, Governor Leavitt, while clearly a proponent of

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201. The key areas are: culture, economic development, education, environment and natural resources, free enterprise and regulatory systems, government, health and safety, human services, infrastructure, and justice. *Id.*

202. *Id.*

203. *Id.*

204. *Local Government Planning Project, Planning for Utah's Rural Counties*, Governor's Office of Planning and Budget in conjunction with Utah Association of Counties.

205. *Id.*

206. *Open Space: The Land That Legislators Forgot*, 1997 Utah Legis. Sess. (Mar. 9, 1997).

207. *Id.*

208. *Id.*

209. *Id.*

planning and growth management, believes that such issues are better left to cities and counties to carry out on their own.<sup>210</sup>

During the 1996 legislative session funding was appropriated for the creation of a fifteen member task force,<sup>211</sup> to among other things, study and recommend a comprehensive policy and solutions to problems and conflicts regarding the interrelationship of air quality, transportation, and land-use issues with an eye towards the development of long-term solutions.<sup>212</sup>

Utah, like many Western states, embodies a strong tradition of personal control over property, and it may take a legislative initiative to motivate the anti-planning legislature.<sup>213</sup> Property rights advocates seem to be making inroads in Utah. Not only was the legislature successful in appropriating money to fund a private property rights ombudsman in the Department of Natural Resources in 1997, but it also secured modest funding for planning workshops and training. Furthermore, language was negotiated which mandates the teaching of private property rights in the workshops.<sup>214</sup> In 1998, several land-use bills were introduced. A bill to authorize the establishment of a county development coordination committee did not pass the Senate.<sup>215</sup> Several other bills have gone on to the House.<sup>216</sup> On March 24, 1998, the governor signed three bills that signify substantial steps toward a change in the way Utah addresses the problems of land use and open space.<sup>217</sup> According to one account, Governor Leavitt has been the target of some criticism for maintaining that growth management is a matter for local governments to address, not the state.<sup>218</sup>

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210. *Guys Hear Experts' Pitch to Preserve Open Spaces: Leavitt Wants to Change Growth Trends*, SALT LAKE TRIB., September 30, 1997.

211. S.B. 243, Task Force on Air-Quality, Transportation, and Land-Use, 1996 Utah Legis. Sess., repealed December 31, 1996.

212. *Id.*

213. *Managing Growth: Don't Plan on It with Legislature; Lawmaker Suggests Grass-Roots Action; Growth Is Thorny Issue in Legislature*, SALT LAKE TRIB., May 15, 1997.

214. *Open Space: The Land that Legislatures Forgot*, 1997 Utah Legis. Sess., March 9, 1997.

215. S.B. 189 (Utah 1998).

216. H.B. 430 (Utah 1998) (a placeholder bill relating to the governance of county service areas); S.B. 16 (Utah 1998) (requiring municipalities and counties to establish a planning commission are currently awaiting action in the House).

217. H.R. 285 (Utah 1998) (appropriates \$175,000 to the Office of Planning and Budget to match funds for local governments to develop and implement land-use plans); S.B. 213 (Utah 1998) (appropriates \$60,000 to the Office of Planning and Budget to invest in training of local officials in planning, technology, and growth management); and UT H.B. 74 (provides for the creation of agricultural protection areas in cities and towns).

218. James Lawlor, *From the States*, 63 PLANNING No. 12 (Dec. 1997).



The "Quality Growth Act of 1999" was introduced by Republican members of the Utah Legislature.<sup>219</sup> Enacted into law at the end of the legislative session, the Act provides eight principles of "quality growth" and a seven-point implementation program which requires mandatory state agency compliance, but voluntary compliance by cities and counties.<sup>220</sup> The Act includes: targeted quality growth areas and incentives for encouraging development in these areas; funding for planning; and the appointment of a quality growth commission (both to oversee implementation and to ensure that property rights are protected).<sup>221</sup>

#### 18. VIRGINIA

In the 1990s, it looked like Virginia was heading for a complete overhaul of statewide and regional planning. While this never happened, in 1996 the General Assembly enacted the Regional Competitiveness Act (sections 15.1–1227.1) designed to encourage voluntary intermunicipal cooperation. The new law, among other things, authorizes the General Assembly to establish a fund to be used to encourage regional strategic planning and cooperation. These so called "incentive payments" will be awarded to qualifying regional partnerships who develop a regional strategic economic development plan which addresses economic competitiveness.

In 1998, a joint resolution was introduced to create a fifteen-member joint legislative "smart growth" subcommittee.<sup>222</sup> The objectives of the initiative, including reduction of sprawl, trimming of infrastructure costs, and revitalization of older communities, are to be realized through designation of "smart growth areas" where state infrastructure funds would be directed.<sup>223</sup>

#### 19. WISCONSIN

On September 15, 1994, Governor Tommy G. Thomson signed Executive Order No. 236 creating the State Interagency Land Use Council to address and coordinate land-use concerns in Wisconsin.<sup>224</sup> The Council was formed to: (1) develop a renewed vision for land use in Wisconsin, (2) recommend consistent land-use policy objectives for state agencies, and (3) establish a framework for state agency participation in land-use decisions currently under discussion by other state-level

219. James Lawlor, *Briefly Noted*, 26 LAND USE L. REP. NO. 22, 175 (Oct. 28, 1998). See Lawlor, *From the States*, 64 PLANNING NO. 12 (1998).

220. Lawlor, *From the States*, *supra* note 219.

221. *Id.* at 37.

222. S.J. RES. 177 (Sen. Mary-Margaret Whipple) (1998).

223. James Lawlor, *From the States*, 64 PLANNING NO. 3 (Mar. 1998).

224. Exec. Order No. 236



bodies.<sup>225</sup> The council, in turn, was charged with the creation of the Wisconsin Strategic Growth Task Force.<sup>226</sup> The role of the Task Force was to study and recommend processes for coordinating land-use activities between state and local public and private interests.<sup>227</sup> The council issued a final report to the governor on July 1, 1996.<sup>228</sup> In essence, the report documents problematic land-use patterns in Wisconsin and attempts to answer four questions that seem to embody key elements of a sound land-use strategy.<sup>229</sup>

The Council concluded that primary responsibility for land-use decisions should remain at the county and municipal government levels, but that the state should facilitate comprehensive decisions by linking agency activities, coordinating existing resources, and supporting regional, county and municipal planning activities.<sup>230</sup> To achieve these goals, the report recommended: (1) creation of a permanent interagency land-use council; (2) construction of a Wisconsin Land Information System; (3) disclosure of land-use activities, plans, and goals; (4) establishment of a Land Use Information Clearinghouse; (5) direct support for regional, county, and municipal planning; (6) creation of a Wisconsin Land Use Library; (7) cross-training of agency staff; and (8) development of dispute resolution options.<sup>231</sup>

The report also recommended that Wisconsin create a multi-level land-use management framework to produce comprehensive plans and implementation programs in all parts of the state.<sup>232</sup> To accomplish this, the council suggested that the state should: (1) make intergovernmental cooperation a statewide priority; (2) modify state policies that promote

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225. *Id.*

226. *Id.*

227. Mark Bugher, chair of the Council, split the task force into three teams charged with the following tasks: (1) to collect and evaluate information regarding land-use planning and programs in other states; (2) to document Wisconsin state and local involvement in land use and evaluate the strengths and weaknesses in current practices; and (3) to collect public sentiments and expert opinions regarding land-use procedures and options in Wisconsin. See WISCONSIN STRATEGIC GROWTH TASK FORCE, LAND USE ISSUES FACING WISCONSIN: A REPORT FROM THE WISCONSIN STRATEGIC GROWTH TASK FORCE (Dec. 1995).

228. STATE INTERAGENCY LAND USE COUNCIL, PLANNING WISCONSIN: REPORT OF THE INTERAGENCY LAND USE COUNCIL TO GOVERNOR TOMMY G. THOMPSON (July 1, 1996) [hereinafter WISCONSIN REPORT].

229. The Wisconsin report's four questions embodying sound land-use strategy are:

1. What steps can state government take to facilitate land use planning in Wisconsin?
2. How can county and municipal land use planning be improved?
3. What new tools can we use to improve land use planning?
4. How can citizen participation in land use planning be enhanced?

*Id.*

230. *Id.* at 4–6.

231. *Id.*

232. *Id.* at 7–10.

intergovernmental competition; (3) require counties to adopt comprehensive plans; (4) adopt comprehensive municipal plans; (5) link zoning and other ordinances to land-use plans; and (6) review the role of regional planning commissions.<sup>233</sup>

The report further recommended the use of the University of Wisconsin system resources, interagency cooperation, and the development of user friendly information and resources for local citizens and officials.<sup>234</sup> To achieve this, the state should: (1) develop and distribute a planning toolkit; (2) transfer critical skills; (3) integrate the Wisconsin Land Information System; (4) make tools useable; (5) require fiscal estimates; (6) target fiscal incentives to selected urban areas; and (7) protect prime farmland, natural areas, and property rights.<sup>235</sup>

The council determined one goal should be to improve and simplify access to reliable information about land-use laws and regulations.<sup>236</sup> Consequently, the state should work to: (1) create a Wisconsin Land Use Library; (2) improve access to land data; (3) use focus groups and other methods to encourage public input; and (4) require public hearings.<sup>237</sup>

The "red book" (a local nickname for the resulting report) was very well received by local officials and others interested in controlled growth in Wisconsin and the process of implementing some of the report's recommendations is underway.<sup>238</sup> Merging of land-use functions has led to the creation of the Wisconsin Land Council and the Wisconsin Land Information Board.<sup>239</sup> Plat review and boundary review have been consolidated in the Department of Administration and the process of laying the platform and infrastructure for the distribution of land-use information is underway.<sup>240</sup> The toughest sell has been in the suburban ring surrounding the Milwaukee area where local control is of great concern.<sup>241</sup> The legislature has also taken interest in the issues, and in January 1998, the Joint Legislative Council's Special Committee

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233. WISCONSIN REPORT at 7-10.

234. The goal should be to equip counties and municipalities with tools that they need to develop their own land-use plans. *Id.* at 11-13.

235. *Id.*

236. *Id.* at 14-15.

237. *Id.*

238. To date, land use has not been a political issue in Wisconsin but rather has evolved as a result of local interest and media attention. The legislature has thus far been generally uninterested in the report and its progeny. Telephone Interview with Mark Bugher, Department of Administration in Madison, Wisconsin (Jan. 28, 1998).

239. *Id.*

240. *Id.*

241. *Id.*

on Land Use Policies issued a report<sup>242</sup> detailing feedback received on the Governor's Land Use Council Report. The Legislative Report also identifies issues and recommendations for further legislative consideration, and identifies three issues for further review.<sup>243</sup>

In 1997, the Wisconsin Realtors Association organized the On Common Ground Foundation to: improve the amount, accuracy, timeliness, and relevancy of information affecting land-use discussions; provide opportunities for the voice of public opinion to be heard on land-use issues; encourage greater public input and participation in land-use decisions; and promote greater civility in land-use discussions.<sup>244</sup>

Madison is one Wisconsin city very concerned with managing its growth and is in the process of creating a land-use plan entitled Vision 2020.<sup>245</sup> There was some consensus among Madison residents to protect farmland and to promote balanced communities with varied land-use types so people can work in the same communities in which they live.<sup>246</sup> The problem is identifying where growth should occur.<sup>247</sup> Vision 2020 attempts to answer this question by tying together transportation and land use to identify where growth should occur and what transportation improvements will be needed to support that growth.<sup>248</sup> The goal of the plan is to promote higher residential densities, balance single and multi-family housing types, and to provide outlying communities with a broader range of housing types such as affordable housing.<sup>249</sup> Vision 2020 strongly recommends that new housing and new jobs be directed to existing communities that are already served by public sewer and water.<sup>250</sup>

### C. *The Future of Smart Growth*

The states discussed above are the tip of the iceberg. Religious leaders are now starting to support smart growth principles and proposals in Missouri and Minnesota.<sup>251</sup> Minority communities are finding them-

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242. STATE OF WISCONSIN JOINT LEGISLATIVE COUNCIL, REPORT OF THE SPECIAL COMMITTEE ON LAND USE POLICIES, COMM. REPORT NO. 12 (Jan. 12, 1998).

243. The three issues for further review are: (1) Models for conflict resolution should be developed; (2) the ability of Wisconsin local government to be involved in planning with communities of bordering states should be determined; and (3) there should be a distinction between the land-use programs of urban and rural areas. *See id.* at 23.

244. 1 ON COMMON GROUND NO. 1 (Fall 1997).

245. Ruth Eckdish Knack, *Go Badgers, Fight Sprawl*, 63 PLANNING 14 (May 1997).

246. *Id.*

247. *Id.*

248. Ten growth scenarios were generated. The scenarios were then fed into a computer to analyze what type of transportation system would be needed for each alternative. *Id.* at 15.

249. *Id.*

250. Knack, *supra* note 245, at 16.

251. *Id.*

selves supporting smart growth themes with the business community, as they discover the isolation effects of sprawl on their communities, creating another form of environmental racism.<sup>252</sup> In states with active citizen initiatives, such as California, local smart growth oriented proposals are finding their way onto the ballots and are succeeding in implementing programs, including urban growth boundaries. As the momentum builds, the political stakes rise in the struggle to see land-use reform float to the top of the public policy agenda. In fact, in many jurisdictions, people are not waiting for the state government to act, as they are actively integrating smart growth policies and principles at the local government level.<sup>253</sup> In addition, new coalitions, such as Grow Smart Rhode Island, Idaho Smart Growth, California Futures Network, Coalition for Smarter Growth (D.C. metropolitan area), Ohioans for Smart Growth, 10,000 Friends of Pennsylvania, and Smart Growth Conference, Atlanta, all support the notion that people from all sectors are demanding change.<sup>254</sup>

The State of the States on Smart Growth presents an optimistic outlook that land-use reform is very much on the radar screen, and perhaps on the horizon as we prepare to enter the next century. States have taken very different approaches for study and reform, and in the end, are finding their unique solutions to the very real challenges of unplanned sprawl.

## II. Political Strategies for Modernizing Land-Use

### Controls—Revisited

In 1992, a ten-step approach to the political strategies for modernizing state land-use statutes was published. Based upon study of successful and failed reform efforts in the 1980s and 1990s the following ten points emerged as important to accomplish legislative reform: (1) appointment of an official body; (2) making the case; (3) opportunity for public input; (4) mechanisms for building consensus; (5) avoiding the "hot buttons;" (6) pinpointing revenue streams; (7) providing incentives; (8) devising a public education plan; (9) phasing in major changes; and (10) going slow and building upon success.<sup>255</sup>

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252. *Id.*

253. See SMART GROWTH NETWORK PROGRESS REPORT at 19 (Dec. 1998). A section of the report profiles smart growth initiatives and coalitions in: Austin, Texas; King County, Washington; and in Northern and Southern California.

254. See *id.* at 19–21 for a description of the missions of each of these new coalitions. These groups represent the next wave of the "1000 Friends" groups which were instrumental in shepherding many of the land-use reforms of the 1980s.

255. Patricia E. Salkin, *Political Strategies for Modernizing State Land Use Statutes*, 8 LAND USE L. & ZONING DIG. (Aug. 1992).



At the time of the research, there were approximately eight states seemingly on the verge of break-throughs in their efforts at land-use reform.<sup>256</sup> With the exception of Maryland, none of those states have yet to move the momentum into statutes, and more than a dozen new states have demonstrated serious interest in reform, with true success realized so far only in Tennessee. These facts lead to a reconsideration of the original ten-step strategy. Did statewide efforts in the 1990s in fact employ these strategies? If they did, then why did they fail to yield positive results in terms of new legislation? If these strategies were not employed, why not? What impact, if any, was the growing property rights movement having on these attempts? What other strategies were being tested by the various states? The remainder of this article critiques these ten steps against more recent modernization efforts.<sup>257</sup>

### III. Revisiting the Original Political Strategies

#### A. *Appointment of an Official Body*

Initially, this strategy focused simply on the need for the state legislature or the governor to take the lead by officially appointing or designating a committee or commission which would study the issues in statewide comprehensive planning and provide a forum for dialogue. At the time, the rationale for this approach was twofold: (1) the belief that this type of "officially sanctioned" activity would in some way lend credibility to the effort for reform; and (2) that a government sponsored approach might provide needed funding and staff support to sustain a multi-year effort to accomplish the goal of modernization.

In the states studied two had a gubernatorial commissions or task forces (California and Wisconsin); five were initiated by the legislature (Massachusetts, New York, North Carolina, Pennsylvania, and Virginia); and one was carried initially by the nonprofit sector (Connecticut). So, with all of this apparent governmental interest, why were there no successes?

#### 1. LEADERSHIP

The simple answer is *leadership*. It is a mistake to equate official designation with either support and/or the ability of the leading proponent to in fact be successful in shepherding reforms through the government. Leadership is critical in a number of key respects. At the state level,

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256. See Salkin, *supra* note 27.

257. This research was conducted by the author with the assistance of a grant from the Lincoln Institute of Land Policy Research. Methodology included site visits and telephone interviews with key stakeholders in about ten states.



interest and leadership is needed in both the executive and legislative branches of government. Leadership has many different meanings. On first blush, by virtue of the fact that one is an elected representative of the people, he or she is a leader. In the world of government and politics, however, leadership may mean the person with the ability to not only draft the legislation, but to get it on the committee agendas and see it through the enactment process.<sup>258</sup>

## 2. LONGEVITY COUNTS

For example, in North Carolina, the legislator who introduced the bill to create the legislative study commission was a first term member. Although he was successful in securing the passage of the bill, he decided to take the opportunity to run for higher office, not returning to the General Assembly in the next session. This left a gap in leadership, with no one to take on the issue, so it simply died on the vine. The experience is somewhat similar in Massachusetts. It seems as though many different legislators over the years had their names on statewide planning or growing smart legislation as a primary sponsor. One reason for the turnover in legislative leadership on this issue was shifting member interests as their committee assignments and leadership posts changed within the General Assembly.

## 3. LEGISLATIVE POWER

One example of leadership is the person with the "power" to actually see a bill become a law. A good example of this is the ongoing experience in Pennsylvania. After several House Select Committees on the issue, dozens of public hearings, and lots of legislative approaches introduced by several different members in the House and in the Senate, the latest sponsor of the legislation indicated that he was personally interested in the issue. Then he shared a gem: things would be different, he predicted, because he now chaired the legislative committee which controlled the particular piece of legislation. It would be up to him, and not another legislator, to see to it that the bill made it onto the committee agenda, and was favorably reported to the floor.

In New York, for a number of years, there has been legislation introduced which would provide a system of statewide and regional coordinated planning. When one looks past the bill numbers, however, it is easy to see the exact same bill from the 1970s (which never succeeded) introduced by a member who simply wants their name attached

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258. See Neal R. Pierce, *Fighting Sprawl! A New Civil Rights Movement?*, at 2 (Oct. 26, 1998) (the author reminds, "Historically great causes have come from the people. Politicians chiefly confirm and implement.").

to it "just in case" the issue should resurface, but who lacks the sincere interest in the issue to move the bill forward. Several new bills introduced in 1998 take a somewhat different approach, but this time one of the sponsors chairs a committee in a position to address the issue.

#### 4. POLITICS

Politically, it is possible to have the "right" kind of person be the "wrong" kind of leader. For example, in the Virginia planning and environmental community, there is a particular member of the General Assembly who is a highly regarded champion of "doing the right thing" when it comes to his particular causes. It was no surprise to learn that he had taken a keen interest and leadership role in the work of the Growth Strategies Commission. During interviews, however, I learned from representatives of the private sector that if this particular legislator thought something was a good idea, the private sector automatically assumed that it was weighted toward the environmental community. This perception would then immediately put a roadblock in private sector support for, and interest in, the initiative. It is naive to underestimate these perceptions, because, in fact, it is private sector interests who contribute more heavily to campaigns and who have the fiscal resources and contacts necessary to "kill the bill."

The key lesson about leadership is that there are many different ways to define a leader. The challenge lies in finding the right leader who is in a political position of authority to "make something happen." That leader must be well respected among the various stakeholder sectors so that they, and the issue of modernizing land-use statutes, are presented in the most credible light.

#### 5. DIVERSITY

Additionally, with respect to leadership, it is not enough to have it at the state level; it must exist at all levels of government (e.g., regionally and locally). Furthermore, it must be cultivated and demonstrated in the nonprofit and private sectors. The nonprofit sector has a critical role to play in education, stewardship, and continuity of the issues. Elected officials are subject to voter whim at the ballot box, but the agenda of nonprofit organizations (including professional organizations) can sustain the tide of political instability, and can therefore serve a major long-term leadership role in sustaining the effort for modernization.

Finally, the nonprofit sector must do a better job in cultivating leadership and support within the private sector. The prestige and fiscal resources which are afforded to various private sector interests should not be overlooked. The home builders, developers, realtors, chambers

of commerce, business councils, and corporations must pay attention to the smart growth issues. Leadership from the private sector is critical for modernization efforts to succeed.

### B. *Making the Case*

All of the states which attempted early modernization efforts did offer, in varying degrees, reports, studies, and articles on what was being proposed and why. Some states, such as California, accomplished this through more than a dozen bound reports published by the State Planning Office. Virginia's Commission on Population Growth and Change issued a number of reports and newsletters to keep people informed about their activities. Other states such as Massachusetts issued a single bound report which did more than simply explain the legislative initiative at hand, but lacked a detailed cost-benefit analysis for reform. States including Connecticut, Pennsylvania, and North Carolina relied on brief legislative summary reports for their documentation as to why, if at all, modernization activity should proceed.

#### 1. IDENTIFY THE CRISES

One key element missing in the effort, however, was the clear articulation of the so-called "rallying cry," or the identification of the "crisis," which makes the case for reform. In the 1970s and 1980s reform efforts were primarily enacted to address concerns about the natural environment, affordable housing, public infrastructure, and other growth related issues. Each person interviewed was asked to identify the major crisis or the number one reason why land-use reform was needed in their state. The almost uniform response was "that is a good question . . . and perhaps the problem." It is somewhat ironic that quality of life, economic development, growth strategies, and urban infill (cornerstones of the Maryland programs) to name but a few, did not roll off of any tongues. Perhaps we have lost sight of the importance of making the case. Or perhaps we have become too accepting of the "old crisis" to the point where we believe the old issues are still the issues today. Or maybe we have simply not come together as a profession to make the case to ourselves and to our communities.

Finally, upon review of comments and testimony submitted at public hearings in a number of states, in general, most seemed to say the same thing, or appeared to lack vision, hard facts, and simply failed to make the case for changing the status quo. Although most of the testimony was clearly submitted in favor of reform, the testimony failed to provide compelling reasons, failed to include innovative options, and failed to

do much more than simply add "two cents worth" of support. This has been a major missed opportunity for making the case.

## 2. LEADERSHIP

Another observation about "making the case" is that there seems to be finger pointing regarding who is responsible for making the case to whom. Should government make the case to the citizens of the state? Should the professions and the nonprofit associations (including issue-oriented groups) make the case to the government, the community (including the business sector and citizens), or both? Should the academic community "make the case" by issuing studies and reports and holding forums? The answer, in a perfect world, is all of the above. The reality is that in too many cases, each group is waiting for the other to make the case, articulate the need, and prove the cost/benefit analysis, to the point where nothing meaningful happens in efforts to push the reform agenda forward.

### *C. Opportunity for Public Input*

Identified as an early strategy, the opportunity for public input is critical to provide a mechanism where planners, local officials, and other stakeholders in the public, private, and nonprofit sectors can have direct access to lawmakers and policymakers regarding the composition of legislative approaches. The public input will often assist in the crafting of better legislation designed to meet the unique needs of each jurisdiction. Although research revealed that the states did an excellent job in holding a large number of public hearings and opportunities for input, a key discovery was that the mere opportunity for input is not enough. A major, coordinated outreach effort is needed to invite people to provide input. Although the quantity of public hearings averaged ten or more, the quality was, in most cases, poor. Quality, being judged based upon the number of people who appeared for the purposes of delivering testimony (as well as the actual content of what was said, as discussed above). For example, in Pennsylvania, a large number of hearings were held, but less than ten people showed up to speak at most of the hearings. In contrast, in Massachusetts, many more people showed up to testify at the various hearings, and interestingly, many more local planners and planning officials participated in the Massachusetts hearings. Few showed up in other states.

When inquiring about the quantity of testimony at the public hearings in the various states, the almost uniform responses were, "there was no staff to be able to make the calls to bring people out," and "that was the not the responsibility of the government." The lesson learned was



that although the opportunities were presented for making the case, those interested in modernization may not have latched on to the opportunity in any type of organized fashion. This could be attributable to the leadership gap discussed earlier.

In 1992, the original strategy for input suggested constituent surveys as a method of eliciting public input. New York remains the only state to have used the "market survey" approach. The Legislative Commission on Rural Resources issued surveys, as did the Government Law Center at Albany Law School and the Land Use Law Center at Pace Law School as part of a joint effort to collect data and report on the desire and need for change. One reason other states did not pick up on this strategy was simply the lack of staff to design, mail, and tabulate surveys. Only California and Virginia had special staff assigned almost exclusively to a reform effort. Other states relied on central legislative staff or an individual staffer in a member's office.

Recent materials published by the American Planning Association call for effective citizen participation to achieve "Growing Smart Results."<sup>259</sup>

#### *D. Mechanisms for Building Consensus*

California remains the only state to try a neutral, academic-institution based effort at public policy dispute resolution for the issue. It does this by bringing all of the key stakeholders together for facilitated working group meetings. Although touted as a success and an early model for other states to emulate, interviews with participants revealed that the process was not as smooth as outsiders might suggest. In fact, six years after the Growth Management Consensus Project took place, stakeholders conveyed attitudes of distrust for the "genuiness" and "honesty" of other participants. Furthermore, it was shared during separate interviews, that all of the stakeholders may not have been vested in the process, believing that in the end, they would make whatever changes they wanted through the political process (via lobbyists and other techniques). This discovery although somewhat distressing, is instructive in showing that we must focus efforts and energy on building trust among the various stakeholders before we can reasonably expect them to be forthcoming when they are all present together in the same room for negotiations.

Another key discovery was that the original strategy focused on consensus building for only key stakeholders which included the "insider"

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259. STUART MECK, MODERNIZING LAND USE STATUTES, Part II (forthcoming Am. Plan. Ass'n).

or political players. While a number of legislators, especially in Pennsylvania, indicated that there was successful negotiation and discussion taking place between and among different legislators who had different reform legislation initiative, a method for public consensus building has been lacking. This initiative could go a long way in supporting several other strategies, including public education and public input. Finally, a big question remains as to who should attempt to build the consensus and how. Should it be a process initiated by the public sector? Who is the right convener? How can we be assured that all of the key stakeholders are participating? And, how can we accomplish all of this in a cost efficient manner? These issues must be addressed on a state by state, and perhaps issue by issue, basis.

E. *Avoid the "Hot Buttons"*

1. DEFINING TERMS—TOWARD COMMON UNDERSTANDING

In 1992, the major "hot button" issues which seemed to stall reform efforts were unfunded mandates on local governments and impinging on local control or home rule. Although these issues continue to surface, new issues have arisen which may prove to be bigger challenges to overcome. Terminology seems to be the most critical issue threatening the success of land-use reform efforts. Just as planners and lawyers are taught to go to the definition section of a zoning ordinance since no two municipalities have the exact same definitions for everything, key phrases tossed around by those desiring to achieve or prevent reform do not use common definitions. For example, to a gathering of planners the commonly accepted meaning of "growth management," "growing smart," and "smart growth" may mean planning how and where our communities want to grow. To the housing and business gatherings the same phrases mean "no growth," "no development," and "no opportunities." Clearly there is a disconnect, and this may be one of the fatal flaws in reform efforts. At a recent conference attended by developers, environmentalists and public sector officials from forty states, the following definition of smart growth was offered: "Growth is inevitable, growth is necessary, but how growth is accommodated can be good or bad. In setting the framework for land development and redevelopment, we must focus on practices that are environmentally sound, economically vital, and that encourage liveable communities—in other words, smart growth."<sup>260</sup> Governor Glendening of Maryland offered, "The

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260. Jim Chaffin, Opening remarks for "Partners for Smart Growth" Conference, (Dec. 1997). See Michael Pawukiewicz, *What is Smart Growth?*, URB. LAND (June 1995), at 45.

goal of smart growth is not no growth, or even slow growth. Rather, the goal is sensible growth that balances our need for jobs and economic development with our desire to save our natural environment before it is forever lost.”<sup>261</sup>

## 2. PROPERTY RIGHTS

A second more recent “hot button” issue stems from the private property rights movement. In approximately half of the states visited, one or more people interviewed identified the property rights movement as a serious obstacle to accomplishing land-use reform. It was apparent from further questioning that respondents were not entirely clear why it was an issue, had no ready response for how to address the concerns of the property rights movement, and could do little more than simply say that property rights proponents had the ear of key legislators and governors. This discovery calls for an immediate response from the planning community. Perhaps not enough has been done to educate constituents and elected representatives about the reform issues and how they impact upon the issues of particular interest to the property rights advocates.

## 3. SPRAWL

A critical “hot button” may in fact be the whole issue of sprawl, mentioned earlier as perhaps the crisis driving the reform efforts. Although one respected columnist writes, “America’s governors, with few exceptions, are routinely missing in action on the critical sprawl issues: growth management laws, tax-base sharing among localities, transit alternatives to highway gridlock, taming state highway departments’ appetite for new super-roads, rigorous action to save threatened farmlands, and ending taxpayer subsidies for sprawl,” he is quick to point out that political wisdom suggests our elected officials should not touch these issues as they tend to offend local government officials, “big bucks” development interests, and property rights advocates. Herein lies the ultimate challenge to accomplishing needed reform when the subject as a whole can at times be a political taboo.

### F. *Pinpoint Revenue Streams*

Originally discussed as an issue with respect to its relationship to unfunded mandates if a state was going to require local compliance with consistency and concurrency approaches, the issue needs to be revisited with respect to the commitment of state resources to sustain an ongoing reform effort. This may include items such as staffing commissions and

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261. Pawlukiewicz, *supra* at 46.

study groups, hiring consultants to conduct necessary studies to help assess the cost-benefit analysis, and fiscal resources to support the public education piece described below. If leadership within government is going to support reform efforts, they must be willing to support it in more than just name. Resources, in varying amounts, will be needed so that a credible effort can exist for a meaningful duration of time to complete the necessary tasks related to many of the articulated strategies.

A lesson learned from the research is that it is perhaps short-sighted to expect that only the public sector needs to pinpoint revenue streams for these efforts. Although the nonprofit community is often squeezed for funding and must be creative in the use of existing resources, they must put some fiscal resources toward education and advocacy for land-use reform, or else future efforts may cease to exist. It appears as though the voices against reform (as most often articulated by the homebuilders and property rights advocates) are being heard louder than the voices in favor of modernization. The 1000 Friends groups that exist (10,000 Friends in Pennsylvania) simply cannot carry the burden alone—in terms of both financial and person power.

#### *G. Provide Incentives*

Initially, this political strategy dealt with the need to provide local governments with incentives for voluntary compliance with a new statewide scheme for coordinated and consistent land-use planning. This need followed on the notion that states would want to avoid the “hot button” issue of unfunded mandates on local governments, and to that extent, new reform efforts might offer guidance and an optional approach to restructuring, as opposed to a top-down mandated system.

Although incentives clearly would work if these systems were being enacted, the bottom line is, short of Maryland and Tennessee, there have been no new major overhauls. This may suggest that the best incentive ought to be directly tied to the case for reform. Rather than focusing on issues of how to ensure local compliance, advocates should first focus on how to “provide incentives” to the statehouses and the governors to authorize the reforms. Job growth, economic development, revitalization, and quality of life should be turned into incentives for government officials to enable the design of a better system for land-use control.

#### *H. Public Education Plan*

This strategy was originally detailed as the plan for letting people know what newly enacted reforms may mean for them. Based upon recent



findings, this strategy needs to be reformulated to require that a series of public education plans be devised in the early planning stages for introducing modernization legislation. It should be the responsibility of all sectors to provide and participate in the design and implementation of public education initiatives. It was not surprising to discover that the public as a whole is left out of the education process. Perhaps this is a major reason why citizens do not come forward to testify (or even attend to listen) at public hearings, and why letters to the editor and other types of private citizen interest in, and response to, land-use reform appear lacking. Interest groups do little to keep the issue in front of their own membership. During interviews, stakeholders representing different groups were asked to share copies of newsletters, publications, brochures, and other letters which may have been sent to their members for the purpose of informing them about the issues. On average, over the span of three to five years, only one to three pieces of literature could be found.

### *I. The Media*

Another key finding was the serious lack of attention or coverage of the issue by the media. With the exception of California, no one in another state could name a reporter who regularly reported on issues associated with growth, sprawl, and land-use planning. Furthermore, in almost every interview, people were asked whether they kept a file of newspaper clippings which could be shared with us. No one, except for legislators, was able to produce this (and they mostly kept clippings which related to their own bills which, in many cases, simply reiterated their own press releases). The response was often that the media "didn't get the issue" or that the topic just wasn't covered. Although the media has been generally silent, there is an opportunity for the professional associations and other nonprofit entities to host media education sessions and to publish "resource guides" for reporters with basic information and with the names of people who can be called upon for more information.

The increasing use of websites, however, is proving useful for the preservation of smart growth information and the increasing quantity and quality of available resources and links.

### *J. Phase-In of Major Changes*

Efforts at land-use reform appear to be daunting to many legislators and to the private sector. Although the legislative approaches in the 1970s and 1980s yielded major systematic overhauls, we have not witnessed a similar phenomenon in the 1990s. In New York, the modern-

ization approach has produced remarkable success. It has been an ongoing eight-year effort which has produced over thirty new or revised planning and zoning enabling statutes. Virginia has also had some success in enacting parts of its overall reform package. Even Maryland, with its recent successes, has chosen to select targeted objectives for reform efforts, rather than completely reinventing all land-use planning and zoning enabling statutes.

*K. Go Slow: Build upon Success*

A key finding is that this takes time, and the challenge is in keeping the momentum. The original ten-step strategy reminds that major systematic overhauls take time, primarily to accomplish the many tasks outlined above to ensure the best possible legislative results. Although stakeholders were cautioned that patience is a virtue, it seems as though, in a number of states, there was no continued momentum, or constant engine driving the issue. While legislators and interested parties did not necessarily expect change in one or two years, once the issues and work began to drag on past three years, there was a significant decline in optimism, a shift in organizational resources away from the issue and in states like Connecticut, North Carolina, and California, the notion of reform began to seriously fade away. New players are constantly needed to fuel the debate and to accomplish all of the educational objectives.

It was, therefore, not surprising that when the opportunity arose to rekindle memories of statewide planning or planning law reform for many of the stakeholders who had lost interest or hope that their state might actually accomplish legislative change, a renewed sense of commitment in the issue developed. For example, in North Carolina, the member of the General Assembly who had sponsored the original study bill has returned to the General Assembly and, after our conversation, indicated he had ideas for next steps. Similarly, at a meeting with a local planner, the conversation began with little interest, but by the end, our discussion centered on what the APA Chapter could do at their next statewide meeting to bring the issue back into the forefront. Experiences in Connecticut were similar. In Virginia, the interest seems to be shifting away from state involvement and toward enabling legislation for localities to design their own systems. California also seems to have suffered a similar fate, with regionalism and growth strategies now being addressed and advanced by groups such as the Greenbelt Alliance, which focuses more on particular regions within the state.

#### IV. Conclusion

Overall, the experience and the lessons gleaned from studying false starts has been satisfying and positive. Not only are many of the states that started reform efforts in the 1990s still trying to devise a workable system, but many other states have joined in putting forth proposals for new initiatives. This resurgence of interest in reform is no doubt directly tied to the work of the American Planning Association's Growing Smart effort. These newer states are fortunate in having the benefit of hindsight, not just from the states that achieved some measure of success in the last two decades, but also because they can now study the lessons learned from unsuccessful attempts in other jurisdictions. Lastly, we must remind ourselves that there is no "best way" to modernize or reform land-use laws that will apply equally in each and every state. Just as we would not take a legislative approach from one jurisdiction and introduce an identical bill in another state, the local politics and the processes for accomplishing reform will also be unique to each state. We need to do our comparative national research and complete our own in-state assessment of what might work and how. Starting with the revised strategies developed from the lessons learned, jurisdictions across the country could be well on their way to realizing much needed reform including the implementation of appropriate smart growth strategies at the state level.

The variety and intensity of modernization and reform efforts across the country offers a glimpse of anticipation as we look toward land-use planning and growth management in the next century. It is clear, however, that to realize success, leadership is needed from the public, private, and nonprofit sectors. In addition, strategic educational programs, targeted to all sectors including the general public, are increasingly critical. The opportunity and promise of a changing regulatory landscape remains on the horizon as our social, economic and environmental challenges demand new land-use approaches.